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Immune to reform?

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Immune to reform?

Understanding democratic reform in three consensus democracies:
the Netherlands compared with Germany, and Austria

Casper Geurtz

Immune to reform?

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Immune to reform?

*Understanding democratic reform in three consensus democracies:
the Netherlands compared with Germany, and Austria*

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aan Tilburg University

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prof. dr. Ph. Eijlander,

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door het college voor promoties aangewezen commissie
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door

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Preface

Sometimes one reads prefaces of PhD theses that refer to personal and professional hardship. I was in the lucky position to experience neither in a form worth mentioning during the four years of reading, writing, teaching, and researching at the *Tilburgse School voor Politiek en Bestuur* (TSPB). This had to do with the people I worked with and those I spent time with outside of the TSPB – although these do overlap, as the TSPB traditionally employs people that are both good at their job and interesting and fun people in general. In this preface, I would like to thank the people who have helped me write this thesis in some way. I apologize in advance for the melodrama that seems to come with prefaces no matter what one tries.

A first word of thanks goes out to my supervisor and co-supervisor, Frank and Linze. You make an excellent supervisory team. As a team, you have complementary strengths and focus on different (but both important) aspects of research and coaching. We planned regular meetings to discuss the progress of the project. Each time, I left with renewed inspiration and energy to work on the thesis. To give an example of the regularity of the meetings: one meeting took place during Frank's sabbatical in Lausanne. Discussing big chunks of different PhD projects together with Frank's other doctoral students on the lake front of lake Geneva was certainly a highlight. I learned a great deal from both of you.

A second word of thanks goes out to all those that have contributed in some way to the project. In the first place, I think of all the respondents that have made time to talk with me (some more than once – as you can see in appendix 1) about the reform processes. It was inspiring to conduct interviews with many interesting people, in the Netherlands, Germany, and Austria. Secondly, I would like to thank all that made time to look at (parts of) the manuscript. This includes fellow doctoral students, but also text editors (especially Ineke Sijtsma). Faults that remain are my own (some, it may surprise you, by choice). I would like to thank the Netherlands Institute for Governance and the Tilburg Graduate School for making the research project possible. An important contribution came from Sandra van Thiel, who once asked me if I wanted to participate in the Public Administration Research Master. I declined as I was planning to do a part of my Master in the United States. Hearing this, she asked me if I had considered doing a PhD after my Master and got me on track for it in the first place. I also want to thank Tamara Metze and Katharina Paul for helping me find a place to stay in Vienna so I could conduct research in Austria.

A third word of thanks goes out to all the nice colleagues at the TSPB. Some of you I worked with whilst teaching classes, some doing research projects, others I did not do joint projects with but socialized with none the less. Several of you I now consider to be more friends than colleagues. I could write a list of names here, but thinking about it, it would be a list of almost the entire TSPB. I think you know who you are. I do want to mention my two room mates, Merlijn van Hulst and Niels Karsten, and thank them for letting me (most of the time at least) play music and watch the occasional sports event while working.

Finally, I would like to thank my friends and family. Some of you seemed to think that I was still studying, asking about my progress in 'school'. Your paradoxical detached-but-interested

attitude made it easy to relax and think of other things than the thesis. Since the development of Whats App the attempts to get me to think of other things have become hard to ignore. Not an hour passed without my telephone pinging or buzzing (my apologies to the roomies). The occasional summertime pictures of friends on the beach while I was working in a book-stacked office were a good motivator to get the job done. I want to single out Maurits Hekking and Jaro Illing and thank them for being my ushers, but otherwise, as with my TSPB friends/colleagues (there is no nice combination of these words), you know who you are. Whether friends I know from school, university, part time jobs, football, or friends that do not fit those categories: thanks for the good times! I hope for many more in the future. Of the many relatives I have, I would like to thank my parents and sister in particular. You have always supported me: I value it a lot. Rosalie, I will not thank you. I remind you instead of what you once told me about your Master's thesis: "Why thank people? I wrote this myself".

Rotterdam, July 2012

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Chapter 1

**The problematic nature of
democratic reform**

1.1 INTRODUCTION

The ideal form of government has been a matter of interest to people for a long time. Famous philosophers from Plato to Machiavelli, from Aristotle to Marx, and from Hobbes to Arendt, illustrate the number of bright minds that have deemed it worthwhile to think about various systems of government (McClelland 2002; Adams and Popelier 2004; Flyvbjerg 2007). However, not only philosophers throughout the ages have thought about these matters, in recent years political scientists have been inspired and motivated by thinking about systems of government as well. Lijphart, for instance, began working on his seminal piece on consociationalism in the Netherlands with the expectation that the Dutch consensus-oriented, power-sharing system would be inferior to the Westminster parliamentary system in England, with its clear majorities (Lijphart 2008), a thought he later had to reconsider.

Democracy is a form of government that has gotten quite some attention. Democracy is a topic that can be approached from many different angles and is thus a topic of interest for academics from many different backgrounds. Depending on the academics' particular interest they can focus on politicians, citizens, election results, economic development, power relationships, governance, management, institutions, implementation questions, and so on. In this study, reform of democracy will be focused on. Reforming democracy will often be a delicate matter. Democracy is a cherished good and attempts to change democratic institutions will spark debates about the dangers and benefits of the proposed reform. At the same time democracy allows for and perhaps even stimulates, citizens to engage in critical reflection on the functioning of their political system. As the group of countries with a democratic system of government has grown in recent years (Stoker 2006; Hay 2007), thinking about improvements to democracy has become more common.

What makes reform of democracy particularly interesting, is that it can be a highly sensitive topic. It can involve politicians making decisions that will affect their own positions in the political system as well as the positions of their political parties. Those with political power are often not inclined to allow new actors into the political arena (Ringeling 1999), whilst simultaneously one needs political power to reform the democratic system. If one managed to attain political power through the existing democratic system, one can easily question whether the existing system is really in need of reform. This effect will be even stronger when one has had political power for a while because it will create vested interests (Leyenaar and Hazan 2011: 437). Therefore, it is logical that opposition parties are often the ones that initiate, or attempt to initiate, reform processes. These processes can be scrutinized intensely by citizens as well, as they have a stake in the matter.

There are many theories that have something to say about changes to policies and reforms of political structures. The analyses by different authors have led to many classifications of types of democracies. Many typologies are quite restrictive and shifts from one type of democracy to another type are thus quite rare, despite substantial pressure for change (Andeweg 1989;

Katz 2008; Hendriks 2010: 158; Renwick 2010). Renwick, for example, focuses on changes of electoral systems in democracies. He has identified only six cases to research in the period after 1980: the electoral reforms in France in 1985 and 1986 from two-round qualified plurality to list proportional representation and back; the reforms in Italy in 1993 and 2005 from list proportional representation to mixed-member majoritarian and then to bonus-adjusted proportional representation; the 1993 reform in New Zealand from single-member plurality to mixed-member proportional; and the 1994 reform in Japan from single non-transferable vote to mixed-member majoritarian (Renwick 2010: 6; Pilet and Bol 2011: 573).

When one uses a less restrictive definition of democratic reform one will find more reform examples. Dahl, for instance, also includes the media in his conceptualization of democracy (Dahl 2000). Still, democratic reform is not something that happens daily in any particular country. The salience of a democratic reform is related to the definition of democracy one uses. Depending on the definition used, reform can refer to the introduction of new electoral laws, the introduction of possibilities of electing officials, and the introduction of possibilities for citizen voting on issues (Lowndes and Wilson 2003; Brazier 2008; Mouffe 2008; Hendriks 2010; Renwick 2010; Leyenaar and Hazan 2011). Repealing or restricting democratic access can be a form of democratic reform as well.

In the paragraphs above, we have discussed democratic reform as something that refers to the institution that is being reformed. There is another meaning of democratic reform, namely the manner in which reforms take place. Debating democratic reform could thus refer to democratically organized welfare reform as well as reform of a democratic institution by less than democratic means. Democratic reform in the sense of changing democratic institutions in advanced democracies is the topic of interest in this study, so all reform cases researched were attempted through the democratic process itself. The theories referred to above that state that democratic reform is a rare happening deal with democratic reform in this sense as well. The analytical work of these and other authors will be discussed in more detail in the first two chapters of this study and used both for the selection of cases and to develop an analytical framework to use on these cases (Lijphart 1999; Dahl 2000; Loughlin 2004; Held 2006; Lijphart 2008; Vatter 2009; Hendriks 2010; Loughlin and Hendriks 2011).

1.1.1 Bringing focus to a broad topic

In this study, the focus will be on democratic reform in the Netherlands. Demands for democratic reform have been put on the political agenda in the Netherlands time and again since the 1960s, but there have been few sweeping (democratic) reforms. Perhaps the only exceptions are the constitutional reforms of 1983, which did not include broad democratic reform but were an update of the Constitution, and the dualization of local and provincial government in 2002 and 2003. In 1989, Andeweg noted that the Netherlands was remarkable for its institutional conservatism, because of big reforms failed to be adopted (Andeweg 1989). As the recent 'democratic audit' of the Netherlands has shown, the 1989 analysis is

still relevant (Andeweg and Thomassen 2011; 2011b). Adams even notes the possibility of the Netherlands being immune to political reform (Adams 2010). A more nuanced picture develops if the distinction between formal and informal institutions is taken into account (Toonen 2000; Hendriks 2010). Informal change has occurred and might even be preferable in some situations (Raad voor het openbaar bestuur 2005; Hendriks 2010: 167). 't Hart and Wille note that the rules of the game have changed in the Netherlands, although the changes have been incremental rather than sweeping, and more cultural than structural ('t Hart and Wille 2006: 126). Kickert and Hakvoort also call Dutch conservatism into question with regard to management developments (Kickert and Hakvoort 2000). Despite these changes in several areas, Andeweg's analysis is still accurate as it regards formal institutions.

The fact that there has been little or no formal democratic reform, is all the more striking considering the preferences of the electorate. Andeweg refers to data from national election studies from 1967 to 1977 which showed clear majority support for such democratic institutions as referendums, direct mayoral elections, and the direct election of the prime minister (Andeweg 1989: 54). Despite these figures, and despite the fact that several attempts have been made to effectuate democratic reforms, the situation has not changed in 20 years. Voter research indicates that nowadays even larger majorities exist in favor of the introduction of particular democratic innovations such as direct mayoral elections and referendums (Hendriks, Van Ostaaijen et al. 2011: 24). Furthermore, the changes in preferences of voters lead Andeweg and Thomassen to the conclusion that Dutch citizens seem to want more direct influence instead of a single vote in national elections roughly every four years (Andeweg and Thomassen 2011; 2011b). Citizens are more inclined to settle scores with politicians and vote politicians out of office after a period in power instead of voting in favor of an electoral program (Andeweg and Thomassen 2011; 2011b). Whilst the desire for more influence could and perhaps should lead to democratic reform, the changed attitude of citizens towards politicians increases the importance of leadership accountability (Bovens and Schillemans 2009; Andeweg and Thomassen 2011; 2011b).

In Germany, just across the border from the Netherlands, debates took place about similar reforms as in the Netherlands in the same period in time. In contrast to the Netherlands, these reforms were implemented more often (Haus 2005; Schmidt 2007; Holtkamp 2008; Kost and Wehling 2010). The successful introduction of such reforms as the direct mayoral election in all the German federal states led Wollmann to conclude that a reform wave was flowing through Germany (Wollmann 2000). This startling contrast forms the starting point of this study, in which the guiding question in its preliminary formulation is:

How can we understand cases of democratic (non-)reform?

This guiding question will be developed into the central question of this study later in this introductory chapter. First, in section 1.2, some of the remarks on democratic systems will be further developed. Then, in section 1.3, the selection of cases for research will be discussed. In section 1.4, the relevance of the topic will be elaborated on by connecting the research to the

state of democracies. In section 1.5, the central research question will be stated. The Chapter will end with an overview of the structure of the book in section 1.6.

1.2 DEMOCRATIC SYSTEMS AND CHANGE

In this study, democratic reforms are focused on. This focus excludes many possible other reforms. In his 1989 article, for instance, Andeweg also wrote about the lack of success with administrative reform in the Netherlands (Andeweg 1989: 52). However, claiming a lack of administrative reform depends considerably on the definition used, as the Netherlands could also be argued to be a relative frontrunner in terms of New Public Management reforms (Kickert and Hakvoort 2000; Pollitt and Bouckaert 2000). Even though the distinction between formal and informal change is relevant for administrative reform as well, both formal and informal reform has taken place whilst democratic reforms are not often supported in the Dutch national Parliament, which is why these cases will be focused on in this study.

With this focus, this study follows typologies of democratic theorists such as Lijphart and Held (Lijphart 1975; 1994; Held 1997; Lijphart 1999; 2000; Held 2006; Lijphart 2008). At the same time, this means that other possible typologies will not be used, despite their merits (Dente and Kjellberg 1988; Terpstra and Wouters 1991; Caulfield and Larsen 2002). For instance, Terpstra and Wouters (1991) distinguish between reforms that have an internal or external orientation and are either political in nature or focused on service delivery. The merit of this typology is that it can deal with both administrative and political reforms. However, as is the case with many such typologies, it obscures as well as enlightens. The introduction of direct mayoral elections in North Rhine-Westphalia, for instance, was argued for on the basis of improving efficiency and quality as well as increasing the democratic legitimacy of the office through more participation. Whilst Terpstra and Wouters place the introduction of directly elected mayors in one compartment of their typology, in reality the reform was argued for in terms of all the quadrants of the typology. Similarly, Caulfield and Larsen developed a typology that distinguishes process-oriented from structure-oriented reforms and administrative from political reforms (Caulfield and Larsen 2002). Because the focus of this study will be on democratic reform processes, these typologies are not very helpful. They can be used for a wider variety of reforms, but as this study focuses on democratic reform, it makes sense to pay more attention to what has been written about democratic reforms and different types of democracies and democratic instruments instead.

There is a large body of knowledge about the characteristics of democracy that can be used in order to select cases (Mueller 1996; Lijphart 1999; Dahl 2000; Held 2006; Lijphart 2008; Vatter 2009; Hendriks 2010). According to Dahl, an ideal democratic process needs to meet five criteria: effective participation, voting equality, enlightened understanding, control of the agenda, and inclusion of adults (Dahl 2000: 38). However, such ideal circumstances hardly

ever exist and in order to make real democracies work, institutions have to be created to reflect these criteria in the best possible fashion. According to Dahl, large-scale democracy therefore requires six political institutions: elected officials, free, fair and frequent elections, freedom of expression, alternative sources of information, associational autonomy, and inclusive citizenship (Dahl 2000: 85).

If Dahl's criteria are used as case selection tools, any reform that changes one of these political institutions or aspects thereof can be considered a democratic reform. In practice most people will probably not think of *all* Dahl's criteria in the context of democratic reform. From Dahl's perspective, a piece of legislation regulating media behavior can also be considered a democratic reform. Indeed, in countries like China, freedom of expression and alternative sources of information are considered to be important points of criticism to argue for a democratic deficit. However, in the context of advanced democracies, quite possibly people will think of more specific examples such as changes in the election of officials or the introduction of referendums.

Dahl's elements of an ideal democracy can take many different forms in reality. When searching for existing forms of democracy and empirically noting the differences between these forms, the work of authors such as Lijphart and Held is important (Lijphart 1975; Held 1997; Lijphart 1999; 2000; Held 2006; Lijphart 2008). Held has traced the historical development of models of democracy back to democracy in Athens some 2500 years ago. A model consists of clusters of ideas that work together. Some of these ideas have to be dealt with in any theory of democracy, such as the concept of legitimacy. Other ideas depend upon the time in which the democracy functioned, such as the modern political party. What should be clear in any case, is that Held uses a historical perspective to analyze the development of democracy (Held 2006).

Lijphart's approach is different. Lijphart notes that the main institutions of democracy can be scaled from majoritarianism to consensual democracy, and that different characteristics of a democracy can be seen to form two distinct clusters. Lijphart applies different indicators to two dimensions: the executives-parties dimension and the federal-unitary dimension (Lijphart 1999; 2008). The five indicators on the executives-parties dimension are: concentration of executive power in single-party majority cabinets versus executive power-sharing in broad multiparty coalitions; executive-legislative relationships in which the executive is dominant versus an executive-legislative balance of power; two-party versus multiparty systems; majoritarian and disproportional electoral systems versus proportional representation; and pluralist interest group systems with free-for-all competition among groups versus coordinated and corporatist interest group systems aimed at compromise and consultation (Lijphart 1999: 3).

The federal-unitary dimension is developed in a similar fashion: unitary and centralized government versus federal and decentralized government; concentration of legislative power in a unicameral legislature versus division of legislative power between two equally strong but differently constituted Houses; flexible constitutions that can be amended by simple majori-

ties versus rigid constitutions that can be changed only by extraordinary majorities; systems in which legislatures have the final word on the constitutionality of their own legislation versus systems in which laws are subject to judicial review of their constitutionality by supreme or constitutional courts; and central banks that are dependent on the executive versus independent central banks (Lijphart 1999: 3-4).

Lijphart then empirically develops the different elements of these two dimensions in order to present an overview of democracies (Lijphart 1999: 248). A map based on these two-dimensions can be divided into four quadrants on the basis of consensual or majoritarian characteristics of the two dimensions. The Netherlands is quite firmly placed in the consensual quadrant of this Lijphartian-matrix. One reason why it could be difficult to reform Dutch democracy is that the institutional structure of the country is formed in such a way that consensus has to be sought in order to effectuate reform, and creating consensus is not always an easy thing to accomplish.

Lijphart has also tracked change of some of the democracies in his analysis. In the consensual quadrant, three countries stand out: the Netherlands, Germany, and Austria. These countries, in contrast to other countries in this quadrant, made a move towards majoritarianism on the executive-parties dimension (and Austria also on the federal-unitary dimension) from 1971 to 1996 (Lijphart 1999: 255). The moves these three countries made in Lijphart's matrix are not as big as the moves made by some other countries such as Belgium, which introduced federalism in the period researched by Lijphart. However, the move 'away from consensual democracy' is more noteworthy because most other countries that scored more consensually on the executives-parties dimension were moving towards even more consensual democracy (Lijphart 1999: 256). It is an especially noteworthy fact, given that Lijphart argues the advantages of the 'kinder, gentler' consensual democracy compared to its majoritarian alternatives in the final part of his *Patterns of Democracy* (Lijphart 1999). Another interesting fact is that *all* the democracies shown in Lijphart's matrix change their position, which indicates that *all* these democracies have implemented reforms (Lijphart 1999: 255). Apparently, there has been a pressure for democratic reform in all the democracies researched by Lijphart.

In recent years, Lijphart's work has been developed further by other authors (Flinders 2009; Vatter 2009; Flinders, Vatter et al. 2011). These authors have taken Lijphart's federal-unitary and executives-parties dimension and added a third dimension in order to increase the validity of Lijphart's factor analysis and to expand the conceptual scope of Lijphart's analysis. The third dimension developed by the authors is the cabinets-direct democracy dimension. In order to add this dimension, Lijphart's executives-parties dimension was modified into a parties-interest groups dimension. The addition of this dimension points towards a strong influence of the presence of direct democracy on the way cabinets can function in a state. It seems that the availability of referendum possibilities leads to more consensus-oriented cabinets (Vatter 2009: 145). On the question of whether democratic models are converging, however, the jury is still out (Flinders, Vatter et al. 2011).

In another fashion Hendriks builds on Lijphart's work, but instead of adding a third dimension to underline the distinction between majoritarian and consensus democracy, Hendriks has added a second distinction to the consensus-majoritarian dimension, which Hendriks refers to as a distinction between aggregative and integrative democracy. For Hendriks, the distinction between direct (self-determining) and indirect (representative) democracy is also important (Hendriks 2010: 12). Hendriks thus ends up with four ideal types of democracy: pendulum democracy, consensus democracy, voter democracy and participatory democracy (see Table 1.1). These ideal types can also be applied to non-national democratic institutions and used to understand informal democratic practices.

As is the case with all models and typologies, their strength of simplifying the categorization of observable phenomena is also a potential weakness. For instance, which quadrant from Table 1.1 is best suited to understand a non-binding referendum result? Especially when informal rules are taken into account, for example, the referendum on the Constitution for the European Union in the Netherlands in 2005, it becomes clear that such an instrument is not best understood from one quadrant of the typology. Formally such a referendum does not constitute a move towards direct democracy, but informally it most certainly does. An advantage of Hendriks' typology for this study is that it sticks to democracy in contrast to the models developed by Caulfield and Larsen and Terpstra and Wouters. One can argue about the specifics of a democratic instrument, but at least one is arguing about democracy. The model is also wider in scope than the Lijphartian models discussed above. Different democratic reforms can be understood with help of Hendriks' typology based on the specifics of the reform.

	Aggregative (majoritarian)	Integrative (non-majoritarian)
Indirect (representative)	Pendulum democracy	Consensus democracy
Direct (self-determining)	Voter democracy	Participatory democracy

Table 1.1: Typology of democracy types (from Hendriks 2010: 12)

As said, even though Lijphart has had to reconsider his initial position on consensus democracies and is now arguing quite favorably of consensus democracy, all democracies Lijphart researched were changing, including the consensus democracies (Lijphart 1999; 2008; Andeweg and Thomassen 2011b). Hendriks sees the Netherlands mainly as a consensus democracy and notes that there have been pleas for changes inspired by the other ideal types (Hendriks 2010: 164). Generally, there has been a pressure in the Netherlands towards the introduction of more elements of aggregative democracy (Hendriks 2010; 2011; Andeweg and Thomassen 2011b). Implementing such reforms leads to hybrid democracy models (Hendriks 2010; 2011). Of course, this assumes that democracies do not completely shift from one model to another with one major reform package. Even if attempted, such major reforms do not come about

easily. Calls for the introduction of elements of other democracy models are often implicit calls for hybrid democracy, and hybrid democracy models counter the institutional tendency of democratic models to reinforce themselves (Hendriks 2011). For consensus democracies such as the Netherlands and Germany, calls for more direct and aggregative elements are not likely to be welcomed by all, even though hybrid models increase the vitality of democracies (Hendriks 2011).

There are calls for reforms from all quadrants in the Netherlands. From the quadrant of voter democracy, Hendriks has noted pleas for an expanding referendum practice and initiatives for permanent voter and user surveys and other forms of large-scale research among citizen populations. From the quadrant of pendulum democracy, Hendriks has noted pleas for elected governors on various levels of the state, as well as initiatives for elections with clearer results (without those long-lasting and messy coalition negotiations). Finally, from the quadrant of participatory democracy, Hendriks has noted pleas for many types of communicative policy-making and initiatives for neighborhood budgets and other forms of civil self-government (Hendriks 2010: 164-165).

As has been shown, a core aspect of democracies is free debate (Dahl 2000). Therefore, it seems only logical that there will also be debate about possible improvements to the democratic system in place. Since the 1960s, there has been a political party in Dutch Parliament (D66) that favors democratic reform. D66 made democratic reform a key electoral issue for their party and has managed to win seats in Parliament since the first time D66 participated in parliamentary elections. In effect, there has been a proponent of democratic reform in the main Dutch legislative body addressing reform issues since that time. Being able to change the structure of democratic institutions is simply part of the democratic process (Lijphart 1999; 2008; Flinders 2009; Vatter 2009; Renwick 2010; Flinders, Vatter et al. 2011).

The present (in 2012) coalition government in the United Kingdom, the birthplace of the Westminster majoritarian or pendulum type democracy, has recently held a referendum to determine whether a reform would be passed to introduce the more integrative (though by no means fully consensual) alternative vote system. This reform was dismissed, but other reforms have taken place in the United Kingdom in recent years (Brazier 2008). What distinguishes calls for reform in different countries, then, is not their existence as such, but that, in some cases, these calls for reform are taken up by political actors, which sometimes result in democratic reform and sometimes not. Despite the fact that democratic reform is something that could be addressed by political parties in many circumstances, it is generally not a very salient political theme (Kittilson and Scarrow 2003).

Depending upon what is focused on, different waves of democratization can be distinguished. Global waves, in which countries switch to democracy from some other previous regime, but also waves of introductions of specific democratic reforms (Huntington 1991; Wollmann 2002; Stoker 2006; Hay 2007). Calls for democratic reforms usually take place against the background of larger social movements or as a response to fundamental changes

occurring in society. For instance, the influence of the tumultuous 1960s on the calls for reform in Western Europe can still be felt. Whereas democracy was seen primarily as representative democracy after the Second World War – and other forms such as direct and participatory democracy were even considered undesirable – starting in the 1960s a growing interest emerged in other forms of democracy than merely representative democracy (Loughlin, Hendriks et al. 2011: 2). The demand for reforms continuously grows ('t Hart 2000).

1.3 CASE SELECTION

The preliminary research question formulated above was: *How can we understand cases of democratic (non-)reform?* This question is only a preliminary question because it needs to be made more specific in order to be answerable. In order to do this, the question can now be restricted in two ways. Firstly, in the number of countries that have been researched. The starting point here was the Netherlands, which functions as a central case because of its atypical position as a non-reformer (Gerring 2007; Lijphart 2008; Andeweg and Thomassen 2011; 2011b). After the Netherlands was selected, Germany and Austria were selected as mirror cases based on their comparability. Second, a restriction was made in terms of the specific reforms that have been researched. In the previous section (section 1.2) different approaches and models of democracy were discussed. In this section this knowledge will be used as a theoretical basis to use for the selection of cases of specific democratic reforms. The general approach for the selection of cases was thus a most-similar systems approach, but the different experiences of Germany and Austria can be used to mirror the experiences in the Netherlands.

1.3.1 The countries

As stated above, three countries have been selected to be investigated in this study: the Netherlands as a central case and Germany and Austria as mirror cases (Babbie 2001; Robson 2002; Gerring 2007; Lijphart 2008). The Netherlands, as has been shown, is known as a country in which it is particularly difficult to change the formal democratic institutions (Andeweg 1989; 't Hart 2000; Andeweg and Thomassen 2011; 2011b). This role as a central case has to do both with the atypical nature of the Netherlands as a non-reformer and with the fact that, as the research would be conducted from the Netherlands, the accessibility of data would be biggest in the Netherlands. In recent years, Dutch governments have attempted to introduce direct mayoral elections and a corrective legislative referendum at the national level and failed to achieve this in both cases. These two reform failures were good candidates for a look at what makes democratic reforms so difficult in the Netherlands, also because these attempts to introduce reform had taken place fairly recently. The reforms will be discussed in more detail in the next subsection.

In order to shed light on the Dutch case, comparable cases were required that could be contrasted to the Dutch reform experience. There have been (attempted) introductions of similar reforms in many countries (Dachs, Fallend et al. 1997; Scarrow 2001; Cain, Dalton et al. 2003; Scarrow 2003; Dachs, Gerlich et al. 2006; Broeksteeg 2007; Schmidt 2007; Brazier 2008). However, the focus will be on countries comparable to the Netherlands in terms of culture and institutions (Putnam 1994; Flyvbjerg 1998; Lijphart 1999; Schaap, Heinelt et al. 2004; Roller 2005; Flyvbjerg 2007; Loughlin and Hendriks 2011). In Germany and Austria, there have also been reforms to introduce referendum possibilities and direct mayoral elections in roughly the same period as the Netherlands and in contrast to the Netherlands, the reform processes seem to have been more successful (Wollmann 2000; Haus 2005; Dachs, Gerlich et al. 2006; Schmidt 2007).

As was shown in the introduction, the Netherlands, Germany, and Austria can all be considered highly consensual countries in terms of the typology developed by Lijphart (1999). All three countries are classic examples of consensus democracies. Especially Austria and the Netherlands can be seen as classic examples that have (or have had for a considerable time) almost all the archetypical features of such a democracy (Lijphart 1999; Lijphart 2000; Lijphart 2008). Germany is in the same quadrant of Lijphart's four-part typology as the Netherlands and Austria, and Germany scores even more consensually in the federal-unitary dimension than Austria and the Netherlands, although not in all dimensions (Lijphart 1999: 248; Hendriks 2010: 76). In recent adaptations of Lijphart's model, these three countries are placed relatively close to one another as well (Vatter 2009; Flinders, Vatter et al. 2011). Furthermore, consensus democracies are less likely to reform their democracies because many actors have to agree upon the reform or, more formally stated, there is a larger number and variety of veto players present in these democracies (Hooghe and Deschouwer 2011; Leyenaar and Hazan 2011).

The three countries can all be considered members of a European family with similar state traditions, namely, the Germanic or Rhinelandic state tradition (Loughlin 2004; Loughlin, Hendriks et al. 2011; Loughlin and Hendriks 2011). State traditions "lay down sets of parameters which determine the conditions within which democracy, at both national and subnational levels, is understood and practiced" (Loughlin, Hendriks et al. 2011: 12). The state tradition approach is based on six features: 1) whether or not there is a legal basis for the state; 2) the relations between state and society; 3) the form of political organization; 4) the basis of policy style; 5) the form of decentralization; and 6) the dominant approach to the discipline of public administration (Loughlin, Hendriks et al. 2011: 11). The Germanic state tradition is a state tradition in which groups from civil society are involved in the policy-making process. It is a corporatist state tradition. In the Germanic state tradition 1) there is a legal basis for the state; 2) relations are organicist; 3) organization is integrally/organically federalist; 4) basic policy style is legal-corporatist; 5) decentralization is cooperative federalism; and 6) the dominant approach to public administration is through public law. This can be contrasted with the other state traditions, which might not have such a legal basis (the Anglo-Saxon tradition) or whose state-society relations might be antagonistic (French tradition). The distinguishing elements

used in the state tradition approach show clear overlap with the Lijphart typology. All the Rhinelandic states show a strong consensual tendency (Hendriks, Loughlin et al. 2011: 720).

Of course, there are also marked structural and cultural differences between the countries (Inglehart 1997; Lijphart 1999; Hofstede and Hofstede 2005; Loughlin and Hendriks 2011). These differences make a comparison all the more interesting because they might influence the different outcomes of the reform processes. Some of these differences will come to the fore in the analysis of the different cases because they can help explain the different reform trajectories in the countries. One such difference is the fact that Germany and Austria are federal republics, whereas the Netherlands is a decentralized unitary state (which corresponds to the Scandinavian state tradition instead). In this sense, when the Germanic state tradition is typified as a tradition “marked by organic federalism” (Loughlin, Hendriks et al. 2011: 13), the Netherlands does not fit into this tradition perfectly. The Netherlands is influenced by the Napoleonic state tradition and has retained centralized elements after the French period in the early 19th century (Andeweg 1989; Loughlin, Hendriks et al. 2011). However, all Germanic states have some Napoleonic tendencies. There seems to be a tendency towards the introduction of more majoritarian elements in these Germanic democracies.

The fact that Germany and Austria are federal republics has consequences for the levels at which decisions are made, and thus for the reform processes. In the Netherlands the chosen cases required national decisions. In Germany, the introduction of direct mayoral elections was a matter for state (*Länder*) governments, as was the introduction of the referendum possibilities that will be dealt with in this book. At the national level, the joint-decision trap has prevented the introduction of referendum possibilities (Scharpf 1988; 2006), perhaps even more so than in the Netherlands (Tsebelis 2002). Therefore, the Netherlands, Germany and Austria score relatively low in terms of direct democracy (which, of course, does not include direct mayoral elections) at the *national* level (Vatter 2009). In terms of the *local* level, however, all three countries provide some referendum possibilities.

Case selection for an international comparison of democratic reform processes is not simple. There are many democracies which differ to a greater or lesser extent. No two democratic systems are exactly the same. Especially when an institutional approach is used, as will be done in this study, it becomes clear that even systems with similar formal structures can function in highly different ways (Putnam 1994; Flyvbjerg 1998; Hendriks 2010). However, precisely because no two democratic systems are exactly the same and because only a limited set of these democratic reform processes is taking place at any time, a case study design is a good option (Ragin 1989; Gerring 2007; Yin 2009).

1.3.2 The reform cases

In the three countries, the reforms researched were aimed at the introduction of direct mayoral elections and the introduction of some referendum possibility. Both the referendum and the introduction of direct mayoral elections are trends in the development of local democracy (Scarrow 2001; Hendriks, Loughlin et al. 2011), although referendums can be organized at

other governmental levels as well. There are three basic ways to become a mayor. A mayor can be: A) appointed by some authority; B) elected by the council of which the mayor will be the chairperson, and; C) directly elected by citizens. Beyond this the exact appointment or election procedure can be very different, as can the powers conferred upon the mayor and the procedure to discharge a mayor (Van der Kolk and Vetter 2004).

The introduction of a referendum possibility shows more variation in its basic design possibilities. There are many different referendum possibilities (Gilhuis, Beus et al. 1984; Cronin 1989; Koning 1995; Mueller 1996; Leduc 2003; Steur 2005). Distinctions can be made between obligatory and optional referendums, i.e. between referendums that are required by law to take place in certain situations such as constitutional amendments and referendums that can take place but are not required by law. Distinctions can be made between referendums that can be demanded by a certain percentage or number of citizens or by parliaments or political officeholders. Advisory referendums, the result of which is only an advice for a legislature to work with, can be distinguished from deciding referendums, which have an immediate legislative effect. Referendums can also differ as to the moment they take place: before (initiative) or after (corrective) a decision of a parliament.

The cases were selected by looking for a deciding referendum possibility at the national level. This would be the best comparison with the Dutch case. In Austria, the most recent introduction of a referendum possibility at the national level was an advisory referendum as a binding version has existed, at least in name, since the First Austrian republic was grounded, after the First World War. In Germany, no deciding referendum possibility was introduced at the national level, so focus was shifted towards the state level, where reforms to introduce deciding referendums did take place.

In the previous subsection, it was shown that the Netherlands, Germany, and Austria can all be seen as consensus democracies in terms of Hendriks' typology of democracies (Hendriks 2006; 2010; Loughlin, Hendriks et al. 2011). Of course, that does not mean that these countries have no elements of other ideal types in place as well (see Hendriks 2010: 138). The reform cases that were researched in this study, are all moves away from consensus democracy towards other types of democracy. The reform cases were not selected based on the effects of the reform (Jacobs and Leyenaar 2011; Leyenaar and Hazan 2011).

A move to introduce direct mayoral elections, is a move towards pendulum democracy in Hendriks' typology (Hendriks and Schaap 2011: 115). It introduces a 'win-lose' voting opportunity within a democracy, an option that is aggregative instead of integrative. At the same time, the move stays within the realm of indirect democracy.¹ A move towards the introduction of referendums is most likely a move towards direct democracy in Hendriks' matrix. However,

1 Although some erroneously argue that this is a move towards direct democracy, as will be shown in the empirical Chapters, it is still indirect democracy. Direct mayoral elections require *more* direct citizen involvement, so in that sense it is a move towards a more direct democracy, but all the while the process is focused on the election of a representative.

this also depends on the type of referendum introduced. For instance, an advisory referendum initiated by government can be introduced. Although this gives people the opportunity to vote on an issue directly, the outcome of an advisory referendum does not result in a government decision right away. The government still has an intermediate role: it can decide to do nothing with its citizens' 'advice'.

At the same time, even an advisory referendum can institutionalize in such a way that governments can hardly ignore its outcomes. An example can be found in the Dutch referendum on the proposed Constitution for the European Union in 2005, which was a consultative, advisory referendum. The Dutch were asked by Parliament to give their opinion in a referendum, the result of which would not be binding for Parliament. However, several parties had indicated before the referendum took place that they would follow the vote of the electorate, thus informally turning an advisory referendum into a binding one.

More participative types of referendum possibilities can be imagined as well. For instance, if the wording of the exact referendum question is the result of a participative process. However, these types of referendums are not very likely to be found at the national level, as forms of participatory and direct democracy in general are used mostly at the local level (Lijphart 1999; Dahl 2000; Loughlin, Hendriks et al. 2011: 19). In general, it can thus be stated that the introduction of a referendum possibility is a move towards direct democracy, but that the type of referendum determines whether or not the selected countries stay within the realm of integrative or move towards aggregative democracy.

1.4 RELEVANCE OF THE RESEARCH PROJECT: THE FUNCTIONING OF DEMOCRACY

Without going into the details of the cases that will be dealt with later in this book, some recent writing on the status and development of democracy will be discussed in this subsection. The developments sketched in this section are not meant to imply that these developments caused the reforms discussed later in this book, nor is a complete overview of all the developments in democracies provided here. However, these developments do provide a context against which the different reform processes take place. Considering the urgency that is sketched by the different authors that will be discussed in this section, it is not surprising that a clear understanding of processes of democratic reform carry a substantial societal value (Babbie 2001; Robson 2002; Booth, Colomb et al. 2008).

A large part of the relevance of this research project lies in the empirical descriptions of the reform processes and the analytical comparison of the reform cases. Specific contributions to theoretical debates are possible, but developing a general theory of democratic reform is not the goal of this research project. The case study approach used in this study is a most-similar system approach that combines elements of interpretative and deviant case studies in

Lijphart's terms (Lijphart 2008). However, any case study has to relate in some way to theoretical developments that have taken place, so that it can have theory-forming or theory-testing consequences.

1.4.1 The position of the state in society

After the Second World War, the economies of most Western democracies flourished, and the overall welfare of the general public rose considerably. After the tumultuous first half of the 20th century, stability and reconstruction became guiding principles in politics. In the Netherlands, society was characterized by pillarization in which followers of an ideology had their own political parties and societal organizations to turn to (Lijphart 1975). In Austria, at least one of the two largest parties (Christian-democrats and Socialists) was part of government since the Second World War (Dachs, Gerlich et al. 2006; Pelinka and Rosenberger 2007). Often, these two parties formed a coalition with a vast majority in Parliament (large enough to amend the Constitution), but occasionally one of the two parties had an absolute majority. In West-Germany, there was a similar pattern with dominant Socialists and Christian-democrats, and a population preoccupied with reconstruction efforts after the Second World War (Schmidt 2007). As a consequence, it was in this period that, especially in Western Europe, the state grew ever larger, developing from a basic state into a caretaker state with many social policies in place (De Swaan 1988).

The post-World War II baby boom generation had different experiences growing up, which led to a different view of the place of people in the world (Inglehart 1997; Andeweg and Thomassen 2011; 2011b). The generation of the 1960s organized protests against vested politics and social practices that had, for a long time, been thought of as unproblematic but were now a focus point of societal critique. Especially 'old fashioned' values about the roles of and relationships between men and women and the contacts between them were criticized, but so were other practices. Whereas the 'traditional' pattern of political involvement was mediated through political parties, the 1960s identified particularly clearly the rise of new social movements (Kriesi and Wisler 1996; Eisenstadt 1998; Kriesi and Wisler 1999). Social movements arose without the mediation of political parties. Furthermore, social movements after the 1960s were often far more single-issue-oriented; not carrying an entire political program but only caring about, for instance, the rainforests was now a viable position for a social movement.

The changing attitudes of citizens have been recorded meticulously by Inglehart (Inglehart 1977; 1997; 1999). Citizens' values showed a development from generation to generation. In advanced democracies, there seems to be evidence for the existence of a post-modern set of values. These values were more prominent among younger generations. These younger generations were more interested in topics such as self-fulfillment than traditionally salient topics such as welfare and labor relations. These generations also had a wider palette of actions to achieve their political goals. Not only in the sphere of citizens, but also in a business

context, the state was becoming less dominant in this period (Kickert, Klijn et al. 1997; Kjaer 2004; Koppenjan and Klijn 2004; Hay 2007). Companies increasingly became multinational businesses. These multinationals were and are linked less tightly to one single country and are often in search of maximum profits for their shareholders. This means that these companies are more inclined to pressure states into concessions that will profit their business.

These societal and economic developments can only be seen in connection to technological developments that seemed to succeed each other at an ever faster pace (Arendt 1959; Castells 2000). Industrialization has led to massive increases in wealth, but now technological developments are happening at an exponential pace. Technology allowed the exchange of ever larger amounts of information, which in turn allowed for more complex processes and production lines to develop.

The upshot of all these developments was, at least, a less dominant state. This gave rise to the development of theoretical ideas that dealt with this less prominent position of the state, such as governance theory (Rhodes 1997; Kjaer 2004) and network theory (Kickert, Klijn et al. 1997; Castells 2000; Koppenjan and Klijn 2004). Both governance theories and network theories attempt to develop a theory in which the state is still an important actor, but no longer the only actor that matters. This means, that in contrast to the old conceptualizations of policy processes (see for instance: Birkland 2001; Stone 2002), much more uncertainty is introduced into newer conceptualizations of policy processes. This enhances the empirical accuracy of the theoretical descriptions, but at an expense of the simplicity of the theories.

Governance and network theories can be empirical and normative. The former theories provide descriptions of the way the state functions in the midst of a vast array of other actors that seek influence and strive to attain their own goals. The latter claim either benefits from or problems with an approach that involves multiple actors and a less dominant state. Empirically there is quite some evidence for the more complex descriptions provided by governance and network theories, which is what matters for this book (Kickert, Klijn et al. 1997; Rhodes 1997; Castells 2000; Koppenjan and Klijn 2004).

1.4.2 The relationship between citizens and the state

The changed value patterns of citizens and the rise of social movements since the 1960s, as well as the weaker position of the state, may very well be ingredients in a mixture that has led to a changing relationship between the citizen and the state. More often than not, the evaluative criterion that is used to qualify the relationship between citizens and the state is legitimacy (Bekkers, Dijkstra et al. 2007). It is the thesis of several authors that this legitimacy might be diminishing due to the changes that have taken place in recent years (Norris 1999; Pharr and Putnam 2000; Cain, Dalton et al. 2003; Stoker 2006; Hay 2007). Related to this issue is that of trust. Most academics find that there has been a steady and problematic decrease in the development of trust in specific democratic institutions, but they disagree on the causes of this reduced trust (Inglehart 1999; Norris 1999; Hardin 2000; Pharr and Putnam 2000; Putnam

2000; Elchardus and Smits 2002; Adams 2004; Hardin 2006; Stoker 2006; Hay 2007). Of course, there are also authors who argue that it is only a good thing that there is some distance in the relationship between citizens and the state (Mishler and Rose 1997; Frissen 2007; 2009).

The decline in trust in societies is not undirected. Putnam et al. argue that non-profit and profit-oriented organizations have not suffered from a loss of trust whilst, within democracies, particularly politicians, political parties, and political institutions are at risk of lowering levels of trust (Putnam, Pharr et al. 2000). Elchardus and Smits similarly argue that particularly representative institutions have to deal with a low level of trust (Elchardus and Smits 2002: 21).

Putnam et al. argue that the drop in trust is caused by three developments (Putnam, Pharr et al. 2000). The first is a drop in governing capacity of national politicians, because of such factors as internationalization. The second development has to do with the fidelity with which politicians act upon the wishes of citizens. This means that, for politicians, responsiveness is an important value to take into consideration (Hendriks, Van Ostaaijen et al. 2011). The third and final development regards an indirect development, which has to do with a decline in social capital. High trust societies function better in many respects, and lowering levels of general trust will also adversely affect government performance (Fukuyama 1996; Putnam, Pharr et al. 2000: 26). Civic culture can serve as an explanatory factor for government performance and regional development (Putnam 1994).

Elchardus and Smits (2002: 46), who have written on matters of trust, refer to Habermas, who states that the differences between the values of citizens and the espoused values of government institutions is the main cause for a lack of trust in government institutions. Citizens evaluate government policies differently from the people in office and this can cause friction. If Habermas' assertion is correct, a political ideology that carries strong anti-establishment values could stimulate the growth of distrust (Elchardus and Smits 2002: 42). It could be argued that something like this has happened in the Netherlands with the rise of the *Lijst Pim Fortuyn* (Pim Fortuyn List) party that gained sudden prominence with a populist anti-establishment program, which coincided with a drop in trust figures in the Netherlands. However, a desire for political leadership was probably involved in the rise of Fortuyn as well (Korsten 2006).

In terms of the causes of distrust, Elchardus and Smits (2002: 99) see five developments as the main causes of this crisis of trust: 1) the growing importance of the media and the duality of the media landscape; 2) secularization; 3) the development of a knowledge society and uneasiness among the less well educated; 4) the ageing population; 5) the development and crisis of the welfare state (Elchardus and Smits 2002: 99). These causes show considerable overlap with the causes identified by Putnam et al. but are somewhat more specific (Putnam, Pharr et al. 2000). However, it follows from both these contributions that there is a link between the crisis of the welfare state and the drop in governing capacity. In the same time period, more media attention for government misdemeanors has caused a 'permanent campaign' with effects on the way in which citizens perceive politicians ('t Hart and Wille 2006: 142).

The above mentioned category of social capital indicates that a drop of trust is not without consequences (Putnam, Pharr et al. 2000). Norris deals with several potential consequences of a drop in trust (Norris 1999: 257). The four consequences she mentions are that growing cynicism may deter conventional political participation; discouraging electoral turnout, political activism, and civic engagement; that alienation with the regime is commonly expected to affect protest politics; that a deep reservoir of trust will lead to voluntary compliance with the law, which is also supported by Tyler and Huo (2002); and that growing tensions between ideals and reality will undermine the stability of democracies, increasing the pressure for political reform in established democracies and hindering consolidation in newer democracies. These are serious consequences worth taking into account.

1.4.3 Reform as a way out?

If these analyses of the causes of declining trust are valid, a mixed picture is the result. On the one hand, some developments are so large that they can be considered out of reach for individual governments. Government capacity cannot be restored by a single government if it is influenced by global developments; precisely this predicament is set forth by such theories as governance and network theory (Kickert, Klijn et al. 1997; Castells 2000; Kjaer 2004; Koppenjan and Klijn 2004). There are numerous examples of problems that cannot be solved by one government alone, ranging from environmental problems to the recent problems with the Euro. If no response by a single government is available to solve such problems and no viable governance alternative is available either, the best response might be clear communication and transparency about these restrictions (Kickert, Klijn et al. 1997; Castells 2000; Kjaer 2004; Koppenjan and Klijn 2004; Andeweg and Thomassen 2011b).

Looking at other issues such as government fidelity, responsiveness, and social capital, there might be a possibility that democratic reforms offer a solution. It is quite conceivable that some government structures are more responsive to citizens than other ones. The introduction of referendums could bring policy results more in line with the popular opinion in a country (Tsebelis 2002; Vatter 2009). It seems likely that when citizens or (opposition) parliamentarians can petition for a referendum, the more salient issues will appear on the political agenda and influence government policies towards those policies desired by citizens.

However, democratic reforms are not easy to achieve, and this problem is the central issue of this study, as has been stated. Andeweg considers the Netherlands a prime example of institutional conservatism (Andeweg 1989), even though reform might be a viable solution to some of the negative development tendencies of Dutch democracy (Andeweg and Thomassen 2011b). 't Hart concurs: the Dutch system is packed with actors with opposing powers; power to push things forward is not so well distributed. Furthermore, in the Netherlands leaders are often viewed with distrust ('t Hart 2000). Scharpf and other authors have also lamented the difficulties of reform. Scharpf describes the phenomenon of *Politikverflechtung* (political entanglement or interdependence) in Germany and the European Union and the difficulty it

creates to reform (Scharpf 1988; 2000; 2006). It is not without reason that *Reformstau* (reform gridlock) was the German word of the year in 1997. In Germany this was connected to various types of reform. For instance, Germany was late in introducing New Public Management-type reforms (Roeder 2004; Wollmann 2004; Kuhlmann, Bogumil et al. 2008). Several years earlier, in 1992, the word *Politikverdrossenheit* (disenchantment with politics) was German word of the year, so the word cannot be completely disconnected from the relation between citizens and politics.

Generally speaking, democratic reform is unlikely to take place in the context of a stable democracy (Renwick 2010; Jacobs and Leyenaar 2011; Leyenaar and Hazan 2011). Renwick has tracked the incidence of major electoral reform from the 1940s onward (Renwick 2010: 5). He noted a peak after the Second World War and after the fall of communism but, besides these moments, there have not been many of these types of reforms. This supports the thesis that major democratic reforms are not common and happen mainly in extraordinary circumstances.

Paradoxically, reforms that might solve problems of trust or legitimacy themselves depend upon trust. As Offe notes: "If anything, the success and survival capacity of the newly built institutions is likely to depend more on people's trust, compliance, and patience in enduring the transition costs involved than in the quality of the design of these institutions themselves" (Offe 1996: 215). Elster et al. noted that "the perceived legitimacy of the process will be one determinant of the extent to which those rules are actually obeyed" (Elster, Offe et al. 1998: 64). Offe argues that two-tier governments are so structured to provide stability, because there are constitutionally guarded aspects in the system and flexibility in terms of policy changes at the same time (Offe 1996: 209).

Institutional theories in general are better equipped to explain institutional conservatism and lack of change than to explain sudden bursts of change (Olsen 2009). Still, institutional theories are logical starting points to look for theories that deal with problems of institutional change because there are many institutionalist theories that focus on relevant aspects of reform processes. In the next chapter, different institutional approaches will be discussed, as well as other theories that offer valuable insights into reform processes.

At this point, it is important to state that the research conducted in this study is not of a normative nature. No position is chosen in favor of or against reform. A lack of reform is not necessarily a problem: it can be a diligent search for the best possible solution, and the time consumed can be viewed as something that leads to higher quality policy. On the other hand, lack of decisions in a process in which there was a clear call for reform is remarkable and can be problematic. If a stalemate arises instead of reform, this probably points to a democratic problem (Koppenjan 1993: 11). Both are possible and it is for others to develop or find theories that provide an answer to this normative question. In this introduction, democratic reform debates have been linked to wider social developments (and, as will be shown in the empirical chapters, so do the politicians involved in the reform processes). It is not claimed that the

reform proposals dealt with in this study provide an answer to these more general problems of democracy.

1.5 RESEARCH QUESTION

As stated, the issue of democratic reform will be the central issue of this study. In the introductory chapter, it was already shown that the example of the Netherlands pops up on several occasions. It has been shown that the Netherlands can be viewed as a country with difficulty in achieving democratic reforms. In particular, two institutional reforms stand out. In recent years, Dutch Cabinets have attempted to introduce direct mayoral elections and the corrective referendum. These attempts have both failed, despite popular support among Dutch citizens (Hendriks, Van Ostaaijen et al. 2011).

It has been shown that there are mixed messages in the literature around the case of Germany. On the one hand, there is talk of a reform wave, on the other hand of a *Reformstau* (Wollmann 2000; Haus 2005; Schmidt 2007; Holtkamp 2008). Both these interpretations are true. On the one hand, there has been a wave of subsequent introductions of direct mayoral elections and referendum possibilities throughout the states of the Federal Republic that did not have these provisions before. On the national level, though, the joint-decision trap still seems firmly in place (Scharpf 1988; 2006). As has been shown, like the Netherlands, Germany is a consensual democracy according to different categorizing theories (Lijphart 1999; 2008; Hendriks 2010; Loughlin and Hendriks 2011).

Austria is the third country that will be dealt with in this study. It is also a consensual country with a culture that is more or less comparable to that of Germany and the Netherlands (Lijphart 1999; 2008; Hendriks 2010; Loughlin and Hendriks 2011). Austria has also seen the introductions of direct mayoral elections and of a consultative referendum at the national level (Dachs, Gerlich et al. 2006; Pelinka and Rosenberger 2007).

The central research question is formulated as:

How can we understand democratic (non-)reform – more specifically regarding the referendum and the elected mayor – in the Netherlands, Germany, and Austria?

Austria and Germany were argued to be suitable mirror cases in a comparative study geared specifically at understanding democratic reform and non/ reform in the Netherlands in section 1.3. The three countries in which the (non-)reform cases take place are relatively, although not fully, comparable because, as has been made clear to some extent, there are important differences between the three countries and the respective reform processes that had to be followed. Answering the research question will offer insight into the failure to introduce these specific democratic reforms in the Netherlands, but also provide insight into Germany and Austria where reforms were introduced.

In the next Chapter, more attention will be given to the empirical questions that need to be answered. However, before these questions can be developed and answered, first it is necessary to further explain the different theories available and to answer the theoretical question:

How can we understand processes of democratic reform from a theoretical perspective?

This question will be the main topic of the next Chapter. The answer to this theoretical question will help to answer the central research question by clarifying key aspects for understanding processes of democratic reform and thereby guiding the empirical research for this study.

1.6 STRUCTURE OF THE BOOK

In Chapter 2, different theories and aspects of theories that discuss processes of reforming democratic institutions will be dealt with. The analytical framework will be developed and the research methodology will be explicated in more detail. In the next three chapters, the different countries will be discussed: the Netherlands in Chapter 3, Germany in Chapter 4, and Austria in Chapter 5. An introduction on the country will be given and the two reform cases will be discussed. The comparative analysis of the reforms in these countries and conclusions can be found in Chapter 6. In Chapter 7 of the book, the wider societal implications of these results will be discussed.

Chapter 2

Theories of democratic reform

2.1 INTRODUCTION

As was stated at the end of the previous Chapter, the central question to be dealt with in this Chapter is the following question: *How can we understand processes of democratic reform from a theoretical perspective?* The central question of this study regards the development of democratic institutions. Therefore, different institutional theories will play an important, but not exclusive, role in this Chapter. Where other theories provide valuable insights into aspects of processes of democratic reforms, these theories will be used. The resulting analytical framework will be developed in subsections 2.6 and 2.7 and used in Chapters 3, 4 and 5 to analyze the empirical cases explored in this study.

There is much literature available on the development of institutions, which makes it difficult to discuss all relevant literature to a sufficient extent (March and Olsen 1982; Ostrom 1982; March and Olsen 1983; 1984; Scharpf 1988; Andeweg 1989; Baumgartner and Jones 1991; Powell and DiMaggio 1991; Baumgartner and Jones 1993; Putnam 1994; Hall and Taylor 1996; March and Olsen 1996; Offe 1996; Andeweg 1997; Scharpf 1997; Goodin 1998; Rhodes 1999; Scharpf 1999; Heffen and Klok 2000; Olsen 2001; North 2002; Ansell and Gingrich 2003; Cain, Dalton et al. 2003; Lowndes and Wilson 2003; Haus 2005; Peters, Pierre et al. 2005; Alink 2006; Bannink and Resodihardjo 2006; Ostrom 2006; Scharpf 2006; Brazier 2008; Olsen 2009; Schmitter 2009; Ziemann 2009; Andeweg and Thomassen 2011; 2011b). In a 2009 overview article on the development of institutionalism in relation to change Olson refers to more than 100 scientific sources and acknowledges the fact that he misses possibly relevant literature (Olsen 2009). In line with Olsen's finding that there is so much literature available, Schmitter argues that comparative political science is currently at a crossroads. Schmitter clusters different theoretical approaches into more historical-institutionalist approaches on the one hand and more rational-institutionalist approaches on the other hand. Whereas the former tend towards dealing with complexity, the latter opt for simplicity. A third 'middle ground' option Schmitter discusses is 'neo-neo-neo-institutionalism' (Schmitter 2009: 37). In this study no choice is made for a particular approach, as rationality plays a role in reform processes and so do historically grown traditions and patterns. Both the rational-institutionalist and the historical-institutionalist approaches have their strengths and weaknesses, but dismissing the role of either historical influences or rational considerations in reform processes would lead to more limited findings and is not necessary for the inductive case study approach that was used in this study. Approaches that focus on rationality as well as approaches that focus on historical influences will be used in this study.

Although this Chapter focuses on institutional theories, there is a risk connected to a too exclusive focus on institutional theories. Institutional theories, particularly historical institutionalism, offer explanations for the stability of institutions, but explaining change is more difficult for institutional theories (Putnam 1994; Flyvbjerg 1998; Kickert and Hakvoort 2000; Peters, Pierre et al. 2005; Olsen 2009; Ziemann 2009). At the same time other authors argue that

instability is inherent to constitutional democracies, which would mean that change would occur regularly (Schumpeter 1994; Eisenstadt 1998). For Peters et al. the central question regarding historical institutionalism, is whether it can stand alone as an approach that can help us understand both change and continuity in politics and policy (Peters, Pierre et al. 2005: 1277). Institutional theories on both sides of the spectrum distinguished by Schmitter deal with change, but depending on the specific institutional theory, the focus will lie with different aspects of a process of change. Political and policy change are central to political life. Debates about policies are always at least implicitly about change (Stone 2002). This means that there are many points of departure to be found in the literature to develop a theoretical framework of change that uses institutional theories. There are general institutional theories that can be used for the purpose (Kiser and Ostrom 1982; March and Olsen 1984; Goodin 1998; Ziemann 2009), but other (non-institutional) theories focused on specific aspects of change, such as the agenda (setting) powers involved in reforms and political processes (Van Eeten 1999; Kingdon 2003), or the leadership involved in these reforms ('t Hart 2000) can be used as well.

As has been made clear in the previous Chapter, this study uses a case study approach. The case study approach makes it possible to go into specific details of a reform process because it allows research to take both structure and agency into account (Giddens 1986; Heffen and Klok 2000; Flyvbjerg 2007). Comparing only starting positions and end results would lead to a focus on structures because the specific interactions that take place within reform processes are missed. Such an approach would probably fit rational institutionalisms. However, such approaches have problems of their own. It is easy to get stuck in a rational choice approach, viewing all actions of political actors as part of a rational plan, whilst there is a need to move beyond self-interest oriented approaches of reform processes (Scarrow 2001; Bowler, Carter et al. 2003; Hay 2007; Leyenaar and Hazan 2011: 440).

This study will use an approach that allows for a wide variety of factors, other than just the self-interest of political parties to play a role in these reforms. The approach will not be completely inductive, as there is much useful theorizing already available. Instead, a general model to analyze democratic reform processes will be developed in subsections 2.6 and 2.7. This model will be based on theories that are already available that deal with democratic reform processes or parts thereof, and will be used to research and analyze the empirical cases. The model will analytically separate the institutional structure from the political actors and the wider context in which a reform process is taking place. The model makes it possible to find both rationality and historical influences when they influence the reform process.

This Chapter is divided into nine subsections. First, different theoretical approaches that discuss institutional change and thus contribute to the understanding of reform processes will be discussed in subsection 2.2. Second, the core elements required to develop a theory capable of analyzing change will be discussed in three subsections. In subsection 2.3 formal institutional structures will be discussed, political actors in subsection 2.4, and the wider context of the reform processes in subsection 2.5. Finally, based on these three subsections an

analytical framework will be developed in subsections 2.6 and 2.7 that will guide the research of the empirical reform cases. In subsection 2.8 the research methods used for this study will be discussed. The Chapter ends with a short summary in subsection 2.9.

2.2 INSTITUTIONALISM AND INSTITUTIONAL CHANGE

Institutional theory is a catchphrase to some extent, because there are quite divergent institutional theories available (Olsen 2009; Schmitter 2009). On the one hand, there are approaches that emphasize the importance of large-scale societal forces, and on the other hand, there are approaches that are based upon deliberate design (Olsen 2009: 4). Both emphasize valuable aspects of institutional development. At the same time, when used exclusively, both approaches miss important aspects of reality, for instance when those using the approach only take notice of institutional architects or of external pressures for change. Instead, there are also theories that argue that institutions have a life of their own and can be influenced by both the environment and by institutional architects (Olsen 2009). One thing different authors agree upon, is that developing theories of processes of (democratic) change and reform is a challenge that needs to be taken up (Peters, Pierre et al. 2005; Olsen 2009; Ziemann 2009).

In line with Schmitter, Ziemann notes that nowadays this work on is being done based upon three broad institutional frameworks: sociological institutionalism, rational-choice institutionalism, and historical institutionalism (Schmitter 2009; Ziemann 2009: 316). Goodin distinguishes historical institutionalism, sociological institutionalism, economical institutionalism, new institutionalism in politics, and new institutionalism in social theory. He argues that, despite their differences, these theories share elements and are complementary (Goodin 1998: 19). All these approaches build upon New Institutional theories that were developed in the 1980s and built upon earlier institutional theories (DiMaggio and Powell 1983; March and Olsen 1984). The term New Institutionalism was coined by March and Olsen, but was influenced by DiMaggio and Powell as well. The New Institutionalism, in its original form, was mainly an organizational theory, which later developed into different directions.

DiMaggio and Powell originally developed a relatively straightforward theory of institutional isomorphism (DiMaggio and Powell 1983). Instead of begging the question why there are so many different organizations, they turned the matter around and asked why there was such homogeneity in terms of organizational forms and practices (DiMaggio and Powell 1983: 148). DiMaggio and Powell argued that organizational actors have to deal with each other and these interactions pressure them to become more like one another. DiMaggio and Powell discuss these processes from a rationalistic perspective. Organizations consciously respond to their environment with their choice of institutional structure. They distinguish institutional isomorphism from competitive isomorphism and maintain that the latter is mainly active in areas of organizational life where free and open competition is in place (DiMaggio and Powell 1983:

149). In those situations of open competition we can think of an evolutionary process in which the most efficient organizational forms are time and again selected out of the body of possible organizational forms.

The process of institutional isomorphism functions in a different way. In those cases, we do not necessarily see an automatic selection process, but there are other processes at work. DiMaggio and Powell distinguish three mechanisms of institutional change, each mechanism with its own cause: “1) *coercive* isomorphism that stems from political influence and the problem of legitimacy; 2) *mimetic* isomorphism resulting from standard responses to uncertainty; and 3) *normative* isomorphism, associated with professionalization” (DiMaggio and Powell 1983: 150). The theory is strong in its simplicity, it is simple and straightforward, but it also misses some complexity of causes. The theory aggregates processes of isomorphism at an organizational level, without providing insight into the exact dynamics fueling these processes.

Years later, the theory still has influence. Offe, for instance, argues that there will be references to and searches for historical parallels, in order to gain legitimacy (Offe 1996: 212). “Imitation, both across national as well as sectoral boundaries, is a powerful device of institutional innovation. The rhetoric of “learning from others” or “learning from successful examples” is employed in order to play down the differences that may exist between sectors and countries, to create a deceptive clarity about some evidently and easily acceptable superior solution, to mobilize support, and to disguise the creative alterations that he supposed “imitation” is likely to involve” (Offe 1996: 213). The search for parallels and other examples eliminates the risk of being the first one to try some new institutional arrangement.

March and Olsen argued that old institutional theories were contextual, reductionist, utilitarian, functionalist, and instrumentalist (March and Olsen 1984: 735). Contextualism, refers to the place of politics in society, which March and Olson record as less central than envisaged in old theories (ironically something that still requires restating nowadays). Reductionism, refers to the process of seeing politics as an aggregate of individual behaviors, where March and Olson record newer theories also leaving room for organizational, inter-individual, influences on decisions. Something similar applies to utilitarianism, which, as a theoretical element, was based on rationally calculated decisions, but human decisions turned out to be less rational than they were thought to be (Simon 1957; and there are many more recent examples, for instance: Zimbardo 2008; Thaler and Sunstein 2009). Functionalism, refers to the view that history has a tendency to work towards efficient organizational equilibriums, which March and Olsen record as no longer an established truth (March and Olsen 1983; Olsen 2009). Finally, instrumentalism views politics as an instrument to ascertain policy goals, whereas insights had changed to include various more symbolic elements into the essence of what politics is (Stone 2002). For March and Olsen, politics is not only an instrument but also a ritual (March and Olsen 1984).

A main element of March and Olsen’s New Institutionalism, is the claim that institutions can be treated as coherent and autonomous political actors. March and Olson thus leave room for

processes that can have a dynamic of their own and develop in unexpected directions. They argue that elements, such as the rules of the game, are not exogenous but endogenous to the political game at hand. Political institutions are nested in other institutions and the interactions between these institutions have certain regularities, but also make it difficult to translate political actions into simple calculations. March and Olson argue that traditionally researchers have tried to deal with the problems of complex systems by statistical aggregation on the one hand and assuming historical efficiency on the other. Institutionalists, by contrast, assume some political structure. "In contrast to theories that assume action is choice based on individual values and expectations, theories of political structure assume action is the fulfillment of duties and obligations" (March and Olsen 1984: 741). This is in turn an oversimplification – as we will later see in the discussion of the empirical chapters – but it does focus on an important element of the workings of composite political bodies. When people work in a commission or in a political party they have to compromise, they inadvertently become part of the politics within a group. This can, of course, be framed as part of a rational calculation, but the question then becomes to what extent that model is valid, reliable, and adequate.

Institutionalism focuses on the role of institutions as actors. What is distinctive about institutionalism, is its focus on the meso-level of society, the formal or informal organization as an explaining factor in the development of society (DiMaggio and Powell 1983; 1984). Of course, as became clear from the March and Olsen article cited above, individual actors can matter, as can wider societal developments. However, the organizational level is the focus of the theory of institutionalism. The micro-level of individual actors influences the organizational level, but it is not a matter of building an equation of different individuals. Similarly, macro-level societal developments, effect organizations, but the course of an organization is not set by society as such. Despite the interplay of elements, the main focus is the organization. As Olsen puts it: "the simple answer is that an institutional approach assigns more explanatory power to the organizations and legacies of institutions than to properties of individual actors and the broader societal contexts" (Olsen 2009: 8/9).

The New Institutionalism was, for March and Olsen at the time, a "narrow collection of challenges to contemporary theoretical thinking in political science" (March and Olsen 1984: 738). More specifically: "The ideas deemphasize the dependence of the polity on society in favor of an interdependence between relatively autonomous social and political institutions; they deemphasize the simple primacy of micro processes and efficient histories in favor of relatively complex processes and histories inefficiency; they deemphasize metaphors of choice and allocative outcomes in favor of other logics of action and the centrality of meaning and symbolic action" (March and Olsen 1984: 738). The appeal of the New Institutionalism and its successors probably also has something to do with the claim of the authors that "*The ideas are not all mutually consistent. Indeed, some of them seem mutually inconsistent*" (March and Olsen 1984: 738; italics CG). March and Olson did not deal with this issue at the time, but the ambiguity that arises makes it possible for an individual author to focus on a specific aspect of the theory. The

overall theory can thus be developed in different directions, which is exactly what happened. Because of the wide variety of not necessarily consistent elements that is already present in the ‘founding’ article of March and Olson, the New Institutionalism continued to develop into directions that emphasize a specific aspect of the institutional approach such as historical institutionalism, sociological institutionalism and rational-choice institutionalism (Brennan 1996; Hall and Taylor 1996; Shepsle 1996; Goodin 1998; Ziemann 2009). This development also follows from the tension between simplicity and accuracy. Weick already acknowledged that this tension is ever present in the different (new) institutionalisms (Weick 1969).

To make a small jump through time and return to the current situation, Ziemann (2009: 316) sums it up as follows: Rational-choice institutionalism focuses on the assumed rational calculations of actors that lead to certain outcomes given certain power distributions. Sociological institutionalism is focused instead on the routines and cognitive templates used by actors, the frames that guide actors. These can be ideological (doing good for others) as well as self interested frames. These routines are part of the legacies that Olsen refers to, and find their roots in cultural theories (Zijderveld 1983; Van Hulst 2008; Olsen 2009; Ziemann 2009). Although culture is an interesting topic, it will not be discussed extensively in this study. To adequately deal with culture requires extensive research that would digress from the topic of reform processes. Instead, patterns of behavior and interactions will be treated as something that can play a role in reform processes, but without the desire to claim these patterns to be a culture, as this would require more extensive longitudinal research specifically on this topic of culture. Finally, historical institutionalism takes elements from both rational-choice and sociological institutionalism, and sees history as playing an active role in the current development of institutions. Many authors define institutions in a fashion similar to Offe: “Institutions establish standards, both normative and cognitive, as to what is to be held normal, what must be expected, what can be relied upon, which rights and duties are attached to which positions, and what makes sense in the community or social domain for which an institution is valid. Institutions accomplish a socializing function in that they serve as examples and reminders of how people “ought to” behave and relate to each other, and what they legitimately can expect from each other” (Offe 1998: 199/200). Historical institutionalism also gives attention to cultural considerations (Putnam 1994). As an approach, historical institutionalism is focused more on inertia than on change.

As was already noted, the challenge for institutionalism lies in developing the capacity to deal with both changing and stable institutions (Peters, Pierre et al. 2005; Olsen 2009; Ziemann 2009). Of the approaches mentioned by Ziemann, historical institutionalism indeed seems to have the broadest scope to deal with different aspects of institutions and seems closest to the original ideal of institutions as explaining factors in and of themselves. Although historical institutionalism might lean too much towards major societal developments (Olsen 2009), the theory does allow more connections *prima facie* than rational-choice and sociological institutionalism, which focus more on individual actors. The problem for historical institutionalism is

that “without including some dynamic conception of agency, and including a greater role for political conflict, the approach cannot provide an adequate explanation for change” (Peters, Pierre et al. 2005: 1277). In contrast to the other institutionalisms, historical institutionalism needs to bring the actor back in.

From the preceding discussion, it has become clear that different institutional theories often use the same words conceptualized in different ways. There is a risk of getting lost in a conceptual maze, when approaches are used that all use slightly different definitions of a concept. Indeed, the call to develop historical institutionalism further, can be read as a call to reconnect different institutional theories. Based on the discussion above, it seems that there are roughly three elements that need to be developed in order to come to an adequate theory of democratic reform:

1. An account of the formal institutional structure and procedural requirements that are in place;
2. An account of the actors involved in the reform process, and;
3. An account of the context against which change is taking place

These three aspects of such a theory will be developed in the next three sections. A difficulty for this approach is that many theories touch upon all three aspects mentioned above. When this is the case, a theory will be discussed there, where it first most logically. If it is possible, only that subsection of a theory will be discussed in relationship to the aspect of the analytical framework that is developed in this Chapter for which it is pertinent.

2.3 FORMAL INSTITUTIONAL STRUCTURES AND DEMOCRATIC REFORM PROCESSES

Historically, political stability can be seen as particularly difficult to achieve and thus as an accomplishment (Eisenstadt 1998). Political stability has to do with such concepts as legitimacy and authority (Immergut 2006; Olsen 2009). An important aspect of creating legitimacy and authority in democracies has to do with the process of democracy, the arrangements in place to guide the political process (Scharpf 1997; 1999; Held 2006; Bekkers, Dijkstra et al. 2007). “Institutions organize actors, issues, and resources in or out of politics and structure patterns of political struggle” (Olsen 2009: 5). Rules and procedures form an important aspect of the quest for legitimacy and authority. Importantly, these rules are debated when democratic reform is the issue at hand.

In advanced democracies, the rules guiding democratic decision making that are in place, the formal institutional structure, are generally seen as guided by the principles of democracy and constitutionality (Olsen 2009; Zouridis 2009). In the Netherlands, people refer to this as the *democratische rechtsstaat*, the democratic constitutional state. In the democratic constitutional state, democracy is an important value, but at the same there are other substantive

values that play a role. Democracy is kept in check by constitutional considerations guaranteeing protection against a possible democratic dictatorship of the majority imposing on the rights of minorities. There are influential traditions that have developed in order to secure the democratic constitutional state, such as the separation of powers developed by Montesquieu and the checks and balances that were developed by the different authors of the *Federalist Papers* (Hamilton, Madison et al. 1966; Held 2006).

The formal institutional structure defines the process or procedures that have to be followed in order to achieve change or maintain the status quo. At the same time, the institutional structure can be analytically separated from the reform procedure (Tsebelis 2002; H  ritier 2007). The formal institutional structure defines such rules as the type of representation, formal hurdles to entry in parliaments, the number of parliaments and the division of a country in municipalities, provinces, federal states or not, the presence of a constitutional court, all those things that can be considered part of the electoral system. It also defines the rules for voting on propositions and the roles of different players in the process such as the executive, legislative, and judicial power. With such a variety of factors it is not surprising that there is also a wide variety of different democratic arrangements to be found in the world (Lijphart 1999; Tsebelis 2002; Held 2006; Lijphart 2008; Vatter 2009).

Even though there are many factors in play, different democracies can be clustered together in groups with similar system characteristics (Lijphart 1999; 2008; Vatter 2009). But not only formal characteristics show similarities, political cultures show similarities as well. Structure and culture influence each other. Formal arrangements, for instance, have an effect on the way politics are conducted and influence the political culture in a country. The interplay between structure and culture can also be the foundation of a model of democracies (Loughlin and Hendriks 2011). In this subsection the formal institutional structure will be focused on.

Goodin argues that the political sphere is not a social sphere that has miraculously stayed stable throughout the years. Institutional rules have been formalized and fixed. The way this happens in the democratic political sphere, is in the form of laws and constitutions. Constitutions are important aspects of the political institution: "They are supposed by their nature to be enduring, stable, hard to change; and for that very reason, they typically contain within them requirements for very large majorities and extraordinary procedures to be followed for their amendment and change" (Goodin 1998: 23). There is, however, a remarkable difference between states in terms of what is actually written down in constitutions and deemed worthy of more protection. Some countries, such as England, rely on an unwritten constitution, whilst other countries such as Germany and France rely heavily on the codification of their Constitution. The formal institutional structure defines the number of majorities that need to be achieved and the types of majorities that need to be achieved. It also defines such things as the involvement of citizens through referendums or possibilities for citizen involvement through initiatives. It can also define the role a constitutional court plays in the reform process.

In most cases, the same formal structures define processes of policy creation and political reform (Tsebelis 2002). The formal structures that guide these reform processes have been an inspiration for a variety of different approaches of political change throughout the years, some of these approaches will be discussed in this subsection. Part of the attraction of formal structures lies in the fact that formal structures provide researchers with very tangible facts. Rules can be found in legislation and jurisprudence and allows for relatively easy research to take place.

2.3.1 Veto players in institutional structures

There are many different models that focus on formal structures. One of the more influential of these institutional models has been developed by Tsebelis (Mueller 1996; Tsebelis 2002; Scharpf 2006: 846; Tsebelis 2008). It is an approach that has a large affinity with rational-choice institutionalism, as it argues that outcomes of processes are reasonably predictable when the institutional structure and the positions of political actors are known. Tsebelis states that when an actor wants a piece of legislation changed he needs agreement from a certain number of individual or collective actors. The actors that need to give their consent are called veto players by Tsebelis (2002: 2). Crucially, the more veto players there are, the more difficult it will be to change policies or implement reforms. If someone has a veto position, the reasoning goes, he or she is in a position to block a reform and the chances of more veto players agreeing on a proposal will be smaller, in principle, than fewer veto players agreeing. The first mover, or agenda setter, becomes important in this approach. The agenda setter is the actor that formulates the proposal that is debated. When the possible range of outcomes acceptable to all veto-players is known, the agenda setter will opt for an outcome closest to his desired outcome.

Next to the distinction between individual and collective actors, Tsebelis also distinguishes between institutional and partisan veto players. Institutional veto players are specified by the Constitution (the institutional structure), partisan veto players by the political system (informal institutionalism). Institutional veto players are those institutions that are specified as having to consent to a law or have the power to veto it. For instance, a president, or a house of parliament can be an institutional veto player. Federalism, in Tsebelean terms (2002: 136), is highly similar to bicameralism and qualified majority hurdles, because it effectively adds veto players or turns some otherwise less relevant partisan or institutional veto players into veto players that matter. Referendums are also veto players, because they add an extra moment in which agreement needs to be found (Tsebelis 2002: 116; Vatter 2009). The people as a collective then become a (collective) veto player. However, the effect a referendum possibility has, depends on the type of referendum that is possible (Koning 1995; Mueller 1996; Tsebelis 2002: 125; Steur 2005). It matters for the outcome of a legislative process who can organize a referendum, for instance.

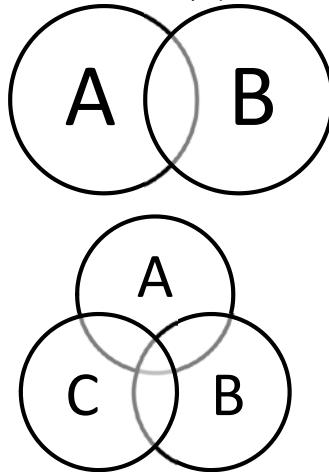
Partisan veto players are those players that make up these institutional veto players, for instance political parties in a parliament. These actors will be considered in more detail in the next subsection on political actors. Partisan veto players can be positioned as blocks that have to negotiate to agree on an acceptable solution. Of course, political parties are in turn made up out of specific people, which complicates matters even more. For Tsebelis, policy outcomes are based on the preferences of the actors involved and the prevailing institutions within which these preferences are articulated (Tsebelis 2002: 17). Decision making can be analyzed as rational choice games that depend on the number of veto players and the preferences of these veto players.

Tsebelis argues that there is a specific room of acceptability in which veto players will be able to maneuver and he visualizes this by drawing circles for the acceptability sets of different players. These veto players can be made up of partisan veto players, which creates situations with nested games (Kiser and Ostrom 1982; Ostrom 2006). There are situations in which there are more or less possible outcomes out of a stalemate. In general, the more veto players there are, the less outcomes will be possible (see Figure 2.1) (Tsebelis 2002: 25). Even if there is a large overlap between the preferences of actors, more involved actors makes the set of acceptable outcomes smaller. Actors are limited in their scope of action in various ways. Dryzek for instance, analyzing discourses on democracy reform, finds several realist constraints: economic downturn, staying afloat in the international system, and keeping internal order are three main constraints on the actions of states in the industrial world (Dryzek 1996: 121). These constraints limit the acceptability scope of these actors. Not being able to find consensus also means that a political system will be more stable, as change will not take place unless, of course, this lack of change in itself becomes problematic and creates instability. Sometimes, when the preferences of a veto player fall completely within a zone that is acceptable to the players that matter, this veto player is considered absorbed. In other words, this veto player ceases to be a veto player due to his preferences (Tsebelis 2002: 28). Of course, even if there are only a few veto players, change can be hard to come by. If there is a big ideological divide between these players, for instance, the search for common ground will be more difficult.

Tsebelis translates his theory into a set of testable propositions and finds statistical evidence for these propositions. In this study, the focus is on the way reform processes develop. This requires more attention for the interactions between political actors instead of a focus on the institutional structures and the preferences of actors. Understanding reform processes requires more than statistical correlations. It is not always productive to tally veto points because negotiations can be complex processes (Vatter 2009: 147). However, Tsebelis' work clearly shows the importance of the institutional structures in place in the potential for successfully changing legislation. Even though Tsebelis' model does not provide us with insight into the inner workings of these legislative processes: "In terms of *specific* predictions, the theory can identify expected outcomes quite accurately when the positions of all veto players, the agenda setter, and the status quo are identified and known by all actors (perfect information)" (Tsebelis

2002: 285). Unfortunately, situations of perfect information are not common.² Tsebelis' model starts with the preferences of actors, but how these preferences come to be is not discussed. This has no consequences for the validity of the model in the context as described by Tsebelis, but for this study it does matter. We need something more than the Tsebelean model in order to understand the actual processes of reform.

Figure 2.1: Acceptable outcomes with two and three veto players.*



* Each circle represents a set of acceptable outcomes for a veto player. Where two circles overlap, the veto players can agree on an outcome. It becomes clear that the scope of acceptable outcomes becomes much smaller when there are three veto players instead of two, as the set of acceptable outcomes is reduced to the area in which three circles overlap.

2.3.2 Nested games and institutions

The inner workings of, for instance, political parties as partisan veto players is not analyzed further in Tsebelis' *Veto Players* (2002). However, these inner workings matter for the development of the preference set of political parties. Where Tsebelis develops his theories by seeing bicameral or federal arrangements as situations in which there are simply more veto players present, there are also theories that deal with layered institutional structures in a different fashion, such as theories that deal with or mention nested games (Kiser and Ostrom 1982; Goodin 1998; Ostrom 2006). Please note that this is not meant as a disqualification of Tsebelis' work, in fact he deals with criticism on this 'additive' approach to veto players. However, for this study these nested approaches are interesting because they can provide insight into the dynamics of processes that influence each other.

2 Although we can acknowledge that game-theoretical models are becoming ever more complex and accurate see: The Economist (2007). The world goes to town. A special report on cities. London.

Kiser and Ostrom focus specifically on political decision making when they distinguish three worlds of action.³ Their contribution was meant to provide a systematized overview of different institutional theories and to connect these theories in a meta-theory. The three worlds of action are the constitutional choice level, the collective choice level and the operational level (1982: 207). These different levels, or worlds, of action are marked by similar internal processes (not only psychologically or sociologically, but as we saw in the previous subsection, occasionally literally similar processes in the same institutions) and also influence each other in certain ways. Importantly, the levels focus on different types of outcomes. The 'lowest' level is the operational level. *"The operational level is the only level of analysis where an action in the physical world flows directly from a decision"* (Italics in original - Kiser and Ostrom 1982: 209). In contrast, at the collective level decisions are made "to determine, enforce, continue, or alter actions authorized within institutional arrangements" (Kiser and Ostrom 1982: 208). The constitutional level is the highest level. "Constitutional decisions are collective choices about rules governing future collective decisions to authorize actions. Constitutional choices, in other words, are decisions about decision rules" (Kiser and Ostrom 1982: 208). A Constitution "defines the ground rules within which day-to-day legislation and government are to be conducted" (Elster, Offe et al. 1998: 64). Note that the way Kiser and Ostrom use constitutional rules does not mean that these rules have to be written down in Constitutions, although often constitutional rules will be part of formal Constitutions.

One of the drivers of Kiser and Ostrom's contribution was the desire to get rid of analytical confusion. There really is a distinction between the operational level, which is a level at which in many cases administrative personnel is implementing certain collective decisions, and the other two levels, which are the terrain of legislators (Kiser and Ostrom 1982; Tops 2007; Lipsky 2010). However, we also have to keep in mind the example of government cabinets, which usually have quite an influence on legislation. We could even go so far as to say that often cabinets have some form of decision making power at the collective decision level whilst they are executive branches that should work at the operational level. The model developed by Kiser and Ostrom is thus clear, but not perfect. The distinction between different types of decisions can be questioned. Which rules can be said to be constitutional and which collective? There are marked differences between countries in the number of items that are constitutionalized. Furthermore, there can also be nested constitutionalism, say in a federal state, where there might be several constitutional arenas. Reality is more complex than a focus on formal institutional structures sometimes shows.

The three worlds of action provide us with a way of placing different types of decision making processes at various levels in a layered model. Kiser and Ostrom argue, that any theory that tries to explain certain aggregate results based on actions, activities and strategies of different

3 More recent work based on this model will be discussed later in this Chapter. See subsection 2.4.1.

actors, needs to have a theoretical explanation that is based on the attributes of individual actors as well as the specific decision situation. The attributes of the decision situation are based on the attributes of the institutional arrangements (the formal institutional structure, in this study), the events (the context), and the community (the actors) in which this process is taking place (Kiser and Ostrom 1982: 187).

As has been shown, Tsebelis states that policy outcomes are based on the preferences of the actors involved and the prevailing institutions (Tsebelis 2002: 17). Kiser and Ostrom allow for more variables in their model than Tsebelis, but similar critique is possible on the model developed by Kiser and Ostrom as on the model developed by Tsebelis. Even though we can fully understand that a decision is based on individuals and the situations in which these individuals operate – and this situation is made up out of the institutions, events and community – further questions can be posed. For instance, what are the relevant personal characteristics and to what extent do these matter? What are different categories of, for instance, events?

2.3.3 *The joint-decision trap*

Another theory that discusses the inertia that stems from layered formal institutional structures is provided by Scharpf (Scharpf 1988; 1997; 1999; 2006; 2008). In 1988 he coined the term joint-decision trap to characterize decision making within German federalism and the European Union. The term joint-decision making stems from the German word *Politikverflechtung*, which has connotations to interdependence or entanglement. Scharpf can be placed in a long line of institutionalists such as March, Olson, Cyert and Schmitter ('t Hart 2000).

The joint-decision trap is a threat to decision-making in situations in which decisions of central governments are directly dependent on the agreement of constituent governments and these constituent governments must agree with (near) unanimity (Scharpf 1988: 254). Note that this latter requirement makes these constituent governments veto players in terms of subsection 2.3.1. For Scharpf, the combination of these two factors confirms the predictions of rational-choice theory, that it will be difficult to reach decisions in these situations. The trap even has the potential to lead to situations in which the central government will lose power to constituent governments, further reducing the possibilities of individual decisions. One could argue that this has recently happened in Germany (Scharpf 2008). Scharpf argues that his analysis still stands, even if it is perhaps too simplified on occasions, particularly in relation to the analysis of the European Union (Scharpf 2006).

In his work on joint-decision traps, Scharpf notes that there is no common terminology for the analysis of decision processes – a problem that is still present today, as might already be clear from the number of different contributions dealt with in this Chapter. Scharpf follows Richardson's notion of decision styles to distinguish problem solving, bargaining, and confrontation (Scharpf 1988: 258). It is interesting that Scharpf shifts his analysis to decision styles, because it takes the focus away from an approach that is focused on rational-choice aspects of the formal institutional structure towards a more inclusive institutionalism. For Scharpf "it is the specific

combination of a decision style with a decision rule which will determine the characteristic capacity of the decision system to reach effective agreement on policy choices" (Scharpf 1988: 259). There is no point in trying to force people in a direction with a confrontational style if you are dependent on their agreement in the end. Bargaining and problem solving (and confrontation) will often be mixed in reality. Less confrontational styles may be more successfully used when there is a common interest to be sought. Even more important "may be the perception of a common 'identity' defined in terms of an ethnic or cultural homogeneity or a 'community of fate' derived from shared perceptions of a common history, of a common 'manifest destiny' (or common ideological goals), or of a common vulnerability" (Scharpf 1988: 261).

2.3.4 *Barrier models*

Compared to the approach of Tsebelis, the approaches of Kiser & Ostrom and Scharpf can be viewed as approaches towards a more inclusive institutionalism. An institutionalism that looks beyond the formal structure and towards the informal processes that take place within these structures. These approaches are closer to the messy realities of political negotiations, but at the same time offer less elegant models of the researched realities. The complexity of the models is increased at the cost of elegant simplicity. Before we shift our attention towards different interpretations of the drivers of political actors in reform processes, one last approach focused on institutional structures will be discussed in this subsection. Barrier-model approaches go even further towards the integration of the formal structure with the actual happenings within these structures (Koppenjan 1993; Koppenjan and Klijn 2004; Rahat and Hazan 2011). Barrier models are intricately connected to approaches that will be discussed later, namely approaches that stress the role of crises in reform processes. These latter approaches discuss those instances where barriers can be overcome because of crises, but we will get to that later.

Barrier models tend to be more inclusive than the models discussed above. They view politics as a series of negotiation rounds. In order to make a decision, barriers will have to be faced in order to arrive at that decision. What these barriers are, will differ per situation and per theory. Above, we have already noted legal, cultural and other barriers. Koppenjan notes the articulation of demands, decision making, and implementation as examples of barriers. However, Koppenjan also argues that barrier models fall short of providing an adequate explanation of complex policy processes (Koppenjan 1993: 23). Koppenjan argues that there are more barriers than were noted in traditional barrier models, which is why he develops his own arena model. More recently Rahat and Hazan have distinguished different types of barriers depending on the theoretical perspective used. For instance, when the focus is on culture, the political tradition will be a barrier to change, when the focus is on sociological aspects, the social structure will be a barrier, and when the focus is on veto players, coalition politics become a barrier to change (Rahat and Hazan 2011: 479). Compared to the concept of veto players as developed by Tsebelis the concept of a barrier is generally more inclusive. More

things can become a barrier to reform than become a veto player. Informal cultural factors can be a barrier but not a veto player, for instance.

Barrier models are often connected to network theories and tend to focus on situations where problems are complex, if not wicked (Hoppe 1989; Koppenjan 1993; Kickert, Klijn et al. 1997; Koppenjan and Klijn 2004). Barriers are often based on negotiation-situations and thus focus on relationships between actors. These relationships often go beyond fixed preferences in a given situation in a way that allows for rational-choice analysis. Actors are influenced by a large variety of things that can go beyond the expectations of rational-choice theories (Stone 2002; Koppenjan and Klijn 2004; Zimbardo 2008; Thaler and Sunstein 2009). Therefore, attention is shifted towards the role of actors in the next subsection.

2.4 POLITICAL ACTORS IN DEMOCRATIC REFORM PROCESSES

In this subsection, different aspects of the roles of political actors in reform processes will be discussed. Although some attention has been given to rational-choice theories in subsection 2.3, we discuss rationality in relation to political actors more systematically in this subsection. We will distinguish different types of actors and the roles actors can play. Even though actors involved in a reform process can attempt to steer a reform process in a desired direction, not everything in a process can be actively influenced by actors. Some political considerations are guided by contextual factors that are beyond the scope of influence of individual actors. This is an issue that we will turn to in the next subsection.

2.4.1 *Actors and rationality*

First, we will look at the way rational choice theory conceptualizes the behavior of political actors. As we have seen above, the role of rationality in processes of decision making is an important aspect of the different institutionalist approaches that were distinguished. The authors discussed above focus more extensively on the structural aspects of institutions and develop models that assume more or less rational actors dealing with these structures. In this subsection, we shift our attention from structures towards the actual rationality of these actors.

Although rational choice models form an important part of the range of institutional theories, introducing rational choice theories is always somewhat ambiguous. It is clear that there is no such thing as full rationality, so any theory based upon rationality needs to make its definition of rationality explicit (Simon 1957; Elster 1979; Flyvbjerg 1998). Developments in models of (repetitive) rational choice games have led to models with increasing descriptive and even predictive qualities at an aggregated level. Elinor Ostrom, whose older work we already encountered in subsection 2.3.2, models with the help of different prisoners' dilemma games. Ostrom's more recent work builds upon the three worlds of action, but develops the interactions between actors within these worlds of action more intricately. According to

Ostrom (2006: 23) “[a]n important challenge facing policy scientists is to develop theories of human organization based on realistic assessment of human capabilities and limitations in dealing with a variety of situations that initially share some or all aspects of a tragedy of the commons”. Ostrom thus works with a bounded-rational-choice theory. For Ostrom: “The central question [...] is how a group of principals who are in an interdependent situation can organize and govern themselves to obtain continuing joint benefits when all face temptations to free-ride, shirk, or otherwise act opportunistically” (Ostrom 2006: 29).

Ostrom develops a model in which individual choice is rational to the extent that the actor makes a decision based on the expected costs and benefits of an action, the internal norms of an actor (which can vary substantially per person) and the discount rate of an individual, that is how this individual values these two against one another (Ostrom 2006: 37). Whether in the context of developing an institution, or in the context of an already developed institution, an institution “can be defined as the sets of working rules that are used to determine who is eligible to make decisions in some arena, what actions are allowed or constrained, what aggregation rules will be used, what procedures must be followed, what information must or must not be provided, and what payoffs will be assigned to individuals dependent on their actions [...] All rules contain prescriptions that forbid, permit, or require some action or outcome” (Ostrom 2006: 51).

Ostrom builds on the nested rules of the three worlds of action. These types of nested rules often lead to confusion in the process of analyzing them according to Ostrom (2006: 52). But nested rules are a reality, and “[c]hanges in deeper-level rules usually are more difficult and more costly to accomplish, thus increasing the stability of mutual expectations among individuals interacting according to a set of rules” (Ostrom 2006: 52). Changing any rule increases for some time the instability of an institutional arrangement and the uncertainty of the outcomes the institution will provide. There will thus be an innate resistance towards changing institutions and especially deeper institutional levels. What makes matters more difficult, is that there will often be various arenas at work at the same time, both formal and informal, in any collective choice situation.

In Ostrom’s view, if accurate data are available on the different elements she distinguishes, individual actors completely and accurately translate the information on benefits and costs, and individuals behave straightforward rather than strategic, you will be able to predict individual strategies (Ostrom 2006: 194). Unfortunately, these settings hardly ever exist (Ostrom 2006: 195). She states honestly that she does not believe that different actors will have found optimal solutions, but that they solved the problems they encountered as best they could. She wants to chart the different structural elements that play a role in these collective choice situations and the way that they influence the outcomes of the situations. For Ostrom, next to the structure of the institution and the attributes of the individuals involved, this also means the common pool resource (and these are always natural resources) that is decided on (Ostrom 2006: 56).

We have already seen that collective choices bear directly on operational situations and constitutional choices bear indirectly on collective choice situations. Ostrom deals with both collective and constitutional choices as institutional-choice situations because they have an influence on the level below the level on which the decision is taken (Ostrom 2006: 192). A crucial issue for any political actor will be to support or reject a reform proposal. Political actors will use some estimate of the costs that follow from the reform. These can be the costs of the change from the old to the new situation, or the costs of monitoring the new situation compared to the old situation. These cost estimates depend on the information that is available and the capabilities of an actor to take these into account. However, there is hardly ever enough information available to take into account to establish a 'fully' rational decision, despite the fact that there is overwhelmingly much information available. In line with the rational choice approach developed by Ostrom, this leads to lists of many different variables.

The costs that need to be taken into account can be divided into *ex ante* costs and *ex post* costs. The *ex ante* costs are dependent on: 1) the number of decision makers; 2) the heterogeneity of interests; 3) the rules in use for changing rules; 4) skills and assets of leaders; 5) proposed rules; 6) past strategies of appropriators; 7) autonomy to change rules – that are on their turn dependent on the past institutional decisions of local appropriators and the requirements set by external authorities (Ostrom 2006: 199). The *ex post* cost evaluations focus on monitoring and enforcement and can be estimated with help of: 1) the size and structure of the collective pool resource; 2) the exclusion technology; 3) the appropriation technology; 4) the marketing arrangement; 5) the proposed rules; 6) the legitimacy of rules in use (Ostrom 2006: 203). How individual actors weigh expected costs and benefits is said to be dependent on the internalized norms and the discount rate of the actors. Ostrom notes three situational variables: 1) if appropriators live near the collective pool resource; 2) if the appropriators are involved in many situations together; 3) the information made available to appropriators about opportunities elsewhere (Ostrom 2006: 206). Furthermore, expected benefits can be estimated if the following things are known: 1) the number of appropriators; 2) the size of the resource system; 3) the variability of the resource units over time and space; 4) the current condition of the resource system; 5) market condition; 6) the amount and type of conflict that has existed in the past; 7) the availability of recorded data on current conditions and historical appropriation patterns; 8) the particular status quo rules; and 9) the particular proposed rules (Ostrom 2006: 196).

All in all, this is a substantial list of factors that need to be taken into account. It seems unlikely that all political actors take all these factors into account. Furthermore, non-monetary considerations can also play a role, as well as personal biases. Individuals will weigh potential loss more heavily than potential gain and individuals are also prone to a short term perspective in terms of gains and losses (Ostrom 2006; Thaler and Sunstein 2009). When these types of biases are taken into account a move towards a more inclusive rational choice theory is made. A theory that is less focused on the *assumption* of rationality, but instead incorporates irrational

tendencies in order to increase the correspondence of the theory to reality. For Ostrom, the task is to further research specific cases of reform and see what happens in these cases.

The model Ostrom builds is quite detailed and this level of detail has advantages and disadvantages. On the one hand, it is a thorough model. On the other hand, it is less conveniently arranged. This issue is perhaps even more pronounced in the model developed by Renwick, which distinguishes even more factors (Renwick 2010). Ostrom's model shows that there are clear commonalities between common pool resource institutional games and other games. The question is, to what extent these different games follow the same logic. Democratic reforms, for instance, can be said to resemble common pool resource games to some extent. Changes to a democratic system can have a direct impact on the power of the elected representatives. Power becomes a common pool resource in these situations. A single political actor can have various considerations. More considerations than just the resulting power of a reform process can play a role in the minds of political actors. The decisions of politicians become less predictable because of these different considerations. What is considered rational, is also a result of political power (Flyvbjerg 1998).

It is not without reason that Ostrom made room for non-rational and not-so-rational factors in decision-making considerations. In the next subsection, we will look at some theories of institutional design. In the introduction of this Chapter, we saw that Olson argues that institutionalist theories either focus too much on institutional 'design' or on historical factors. Institutional design theories are similar to rational choice theories as these theories assume that institutions can be designed (Elster, Offe et al. 1998; Goodin 1998). Designing is normally perceived to be a rational and willful activity. Political actors can become the designer of institutions in these situations. We deal with these theories in the next subsection.

2.4.2 Actors and institutional design

The term design, as such, is clearly connected to some actor or group of actors actively creating or developing an, or several, institutions. When a term is used in this way, it seems to refer to design as a willful and rational activity. This does not mean that, in the process of willfully designing an institution, nothing can go wrong. A designed institution might not function as expected or an actor might not be fully rational and thus miss something in his considerations. From the perspective of theories of design, these are unforeseen effects of the original activity of institutional design that can be dealt with. Theories of institutional design form an important part of institutional theories that deal with reforming institutions (Elster, Offe et al. 1998; Goodin 1998; 1998b). It is important to note that theorists of institutional design acknowledge that there is no such thing as an almighty institutional designer. "The Myth of the Intentional Designer (still less the Myth of the Institutional Design) is greatly to be avoided" (Goodin 1998b: 28). Authors that work from an institutional design perspective often use different institutionalist approaches as well, such as rational-choice institutionalism. So there is quite some literature that can be placed under the heading of institutional design.

Instead of following the 'myth' of the absolute institutional designer, it is argued that partial design and indirect design are possible (Goodin 1998b: 28). Instead of a 'back to the drawing board'-moment, actors will try to change one aspect of an institution. If you cannot stop people from smoking altogether, you can at least try to get a ban on smoking in restaurants. Instead of a direct intervention in social reality that changes the way everything works, an attempt can be made to change something indirectly. From this perspective works such as 'Nudge' and 'The Tipping Point' become theories of indirect institutional design (Gladwell 2002; Thaler and Sunstein 2009). Institutional design as partial change is more like a process of muddling through (Lindblom 1959), adapting incremental (satisficing) changes, as opposed to revolutionary change (Simon 1957). From this perspective, the manner in which a mayor gets in place is also a partial change to an institution that could fall within the 'realistic' category of institutional design.

According to Goodin, there are three modes of change: accidental change, evolutionary change, and intentional change of institutions (1998b: 24). Normally, these modes of change are often at work at the same time in reform processes. In effect, this means that we can conclude that these categories are mainly analytical. The designing aspect of institutional design is somewhat elusive. "The reference seems always essentially to be a notion of "goodness of fit" between the designed object (policy, mechanism, system) and the larger context in which it is set"(Goodin 1998b: 33/34). In the case of designing systems "being well designed means that all the pieces fit together well in a harmonious whole: being well integrated, being in equilibrium" (Goodin 1998b: 34). Pettit elaborates: "When I speak of institutional *design* I do not necessarily have in mind the devising, from scratch, of new social arrangements. The phrase certainly covers that case, but it is meant also to apply to the more commonplace project of existing arrangements to see if they are satisfactory and of altering them where necessary: the project of rethinking and reshaping things – perhaps quite modestly – rather than the project of giving them their initial form" (Pettit 1996: 55). Others argue that "institutional design is largely a matter of reshaping the constellation of discourses in society" (Dryzek 1996: 104).

In the end, institutional designing needs to take place somewhere and has to be done by someone or some group of actors. The argument of institutional design theorists that discuss the role of political actors is "that the course of transformation is critically dependent upon the configuration of actors" (Elster, Offe et al. 1998: 294). In the next subsection, these configurations of actors and the variety of resources they can use will be discussed.

2.4.3 *Actors in network theories*

It is difficult to write anything about politics without using some concept of political actors. Political actors form the core of many network theories of political decision making. We have already seen different conceptualizations of political actors in the subsections above. Essentially, network theories are theories about how actors interact with each other in situations where something is at stake (Kickert, Klijn et al. 1997; Castells 2000; Koppenjan and Klijn

2004). Often, the concept of a political arena is used to describe the place where the interactions take place (Koppenjan 1993; Kickert, Klijn et al. 1997; Van de Donk 1997; Koppenjan and Klijn 2004). Arenas are not necessarily formal decision structures but they can be any situation in which different actors come together to take or debate a decision. The crucial element is the element of choice. An arena is a moment or situation in which a choice is made, so a political arena can both be a formal parliament or an informal town meeting (Koppenjan 1993: 32).

A political actor can basically be anyone involved in a political process, either an individual or a composite actor, such as a political party. Institutional theories claim that when there is a composite actor involved, this actor will have specific rules to guide behavior within that composite actor. Furthermore, stable policy networks can also develop patterns of behavior (Kickert, Klijn et al. 1997; Tsebelis 2002; Koppenjan and Klijn 2004). Which actors are important will vary per policy issue and it can vary through the course of a process. An actor that seemed unimportant at first can suddenly become highly important in a later stadium of a process.

Actors in any policy process have certain interests or goals. Actors perceive their environment and they have strategies to attempt to achieve their goals (Birkland 2001; Koppenjan and Klijn 2004). The goals and interests of actors will differ. In the case of political parties, a political interest can be based upon the political ideology of the party but it can also depend upon the members of the political party and the overall development of society. What an actor perceives to be its interest is something that needs to be established empirically and cannot be predicted upfront. Interests can be monetary, ideological, power-related, and many other things. Political parties, it is often thought, are guided by power-political considerations (Stoker 2006; Hay 2007). As was discussed earlier in this Chapter: why would a political party want to change the institutional structure that brought them their power when political parties want to maximize political power? One answer would be, that the party wants to change the structure in its favor. Another answer would be, that political parties are also motivated by other things than power-political considerations. Power-political considerations can also vary across parties.

Political actors perceive their environment and other actors in a certain way. These perceptions influence their strategies. Actors are constrained in their ability to develop strategies by external developments, cognitive factors, social factors, institutional factors, and management factors (Koppenjan and Klijn 2004: 121). Actors can aim their strategies either indirectly at contextual factors to the arena or directly at the composition of the arena itself. Koppenjan distinguishes six contextual factors that play a role in this strategy developing process: 1) the nature of the problem; 2) characteristics of the organization; 3) characteristics of the policy area; 4) other policy arenas; 5) the political cycle, and; 6) the societal and political-administrative climate (Koppenjan 1993).

There are four strategies aimed directly at the arena of political negotiations (Koppenjan 1993: 54). These strategies are the same for all actors, although Koppenjan reserves a special

position for the policy forming management. Policy forming management could be seen as, initially, the *primus inter pares* amongst the actors involved, much like the agenda setter in Tsebelis' model (Koppenjan 1993; Tsebelis 2002). The first strategy targets the formulation of the problem: changing the dominant conception, formulating a new one, or denying access of other definitions. The second strategy targets the solutions that are considered. Again, an actor can change dominant perceptions, introduce new solutions, or block the entrance of new solutions into the arena. Dealing with the participation in the arena is a third strategy. Actors can try to block from or promote entrance to the arena and seek new partners in the arena. Finally, there are strategies aimed a time. These time oriented strategies can be aimed at different aspects of the process such as planning the moment in which things are debated or influencing the pace of the decision making process (Koppenjan 1993: 63).

The ability to execute a political strategy is limited by the resources of a political actor. Koppenjan and Klijn, for instance, distinguish financial resources, production resources, competencies, knowledge, and legitimacy (Koppenjan and Klijn 2004: 144). However, resources can be distinguished upon other criteria, or resources can be further specified. The capacity to generate publicity can be very important. "Especially when the process is under strong scrutiny from the public, the parties will feel constrained to present their argument in terms of the common good or the public interest. Self-interest, in other words, may induce the speakers to adopt non-self-interested language" (Elster, Offe et al. 1998: 77). Elster et al. offer examples of strategic argumentations, such small parties arguing for proportional representation systems, and appeals to values such as equity, stability and efficiency (Elster, Offe et al. 1998; Stone 2002). However, publicity may not always have a positive influence: "we must balance a number of negative effects: the opportunity for strategic precommitment, vanity-induced reluctance to back down, as well as the irreversibility of publicly stated positions" (Elster, Offe et al. 1998: 78). Having the capacity to generate publicity can be seen as a resource of its own, as an effect of someone's financial capacity, or as an effect of network connections, depending on how resources are defined. Renwick's research into reform cases shows that sometimes political elites dominate a reform and sometimes citizens dominate (Renwick 2010; 2011). Renwick distinguishes various levels of dominance on the count of citizens and politicians. There are three steps in between complete dominance of citizens or politicians: when the public forces politicians to do something (but do take notice of the opinions of others), when politicians reform in order to placate a passive public, and when politicians are constrained from reforming by public opinion (Renwick 2011: 457). Being able to generate publicity for a cause can help shape public opinion.

Where Koppenjan and Klijn discuss the nature of democratic political systems, it is subservient to the substantive policy processes they are actually interested in (Koppenjan and Klijn 2004: 239). However, Koppenjan and Klijn do have something to say about institutional design more generally. They warn against attempts to change institutions without really thinking about the measures taken. Designing institutions is a difficult and delicate matter, "[e]specially when

this [...] is inspired by the pursuit to solve a concrete problem or realize a specific solution, one must ask whether such intervention is justified. Often such intervention is considered from a specific objective or value that does not consider the variety of values that might be of interest in the longer term and the perspective of a larger set of problems. A better motive [than fixing, for instance, an efficiency problem, CG] for institutional design is the observation that certain interests in various policy games are structurally under-represented" (Koppenjan and Klijn 2004: 214). The institutions of democracy are meta-institutions as was stipulated in the model of Kiser and Ostrom, and changing these institutions requires a type of learning that goes beyond the double-loop learning, which these democratic institutions are capable of as part of their design (Argyris and Schön 1974; Kiser and Ostrom 1982; Hall 1993).

Koppenjan and Klijn distinguish several strategies that partially overlap with Koppenjan's earlier contribution. These strategies can be used by actors in order to change institutions. The first strategy is to change the rules of the network (Koppenjan and Klijn 2004: 215). More specifically, they mention the composition rules, the outcomes, and the interaction rules of the network. Another strategy is that of reframing the problem (Koppenjan and Klijn 2004: 226). This strategy can involve the production of policy documents to reframe the problem, the changing of administrative stories, and the use of sensitizing concepts, but also the using of crisis situations and big events as policy windows.

Koppenjan and Klijn mention many factors that can be of influence. Compared to the public-choice oriented approaches discussed above (Kiser and Ostrom 1982; Tsebelis 2002; Ostrom 2006) they differ in their choice of starting point. Whereas public-choice theories assume certain behaviors and explain what happens based on those premises, Koppenjan and Klijn have a more bottom-up empirical approach. The model developed by Koppenjan and Klijn leaves more room for various behaviors of actors. This is also true for the model developed by Renwick (2010), which leaves room for different approaches having valid conclusions in different circumstances.

Renwick, for instance, analyses reform cases from two main theoretical perspectives: a power-maximization approach and an inherent and contingent factors approach (Renwick 2010: 8). The first approach is in fact a rational choice approach in which the explanation for the reform is sought in the power maximizing strategy of the politicians in power. The second approach is a general contextual approach to reforms, in which inherent and contingent factors cause the reform. Importantly, both approaches are incapable of explaining all the cases he studies. Even processes that seem clearly positioned within a specific theoretical tradition can turn out to be more complicated than might have been expected and develop into unexpected directions (Renwick 2010). One possible reason for these unexpected developments in political processes is the presence of leadership in the interactions between humans. In the next subsection, leadership will be discussed.

2.4.4 *Actors and political leadership*

Leadership research is a specific area of research that deals with interactions of political actors. Leadership is attributed to actors that become influential and succeed in influencing other actors in one way or another. Leadership is a classic research topic for political science. Leadership plays an important role in (local) democracy (Korsten 2006; Ringeling, Daemen et al. 2012). Leadership has been an important topic for a long time. From Weber's classic sources of authority to Machiavelli and Plato, there is an enormous amount of literature on the topic. Therefore, in this subsection there will be a focus on reforming leadership such as developed by 't Hart (2000).

For 't Hart, the reforms implemented in Australia from 1983 onwards are a source of academic inspiration. Three of four major reforms in Australia were passed in that period. This leads 't Hart to state that political-administrative leadership plays a crucial role in the determination of the nature, contents, and timing of such interventions, although (economic) crisis probably played an important role in the reforms as well ('t Hart 2000). However, the verdict on the exact interplay between leadership and crisis in reform situations is not yet out (Boin and 't Hart 2003; 't Hart 2011). 't Hart acknowledges that the role of reforming leadership is not equally big in all instances. "Throughout the years I have learned against my own desire that the power of decision makers is limited by impersonal institutional factors such as laws, regulations, cultures, policy routines, and political power constellations" ('t Hart 2000).⁴ There is room for leaders to deal with these factors and manipulate them in a fashion that suits these leaders.

The way 't Hart views it, there are two overly simplistic interpretations of the issue of leadership in relation to reform. There is the danger of the superman syndrome, in which everything is seen as a result of leadership, and there is an actor-structure problem, in which it is questioned to what extent actors are free to form their own opinion and to which extent they are influenced by other factors such as history and culture. 't Hart therefore emphasizes five principles. His first principle is that people in politics matter. "I basically further the new institutionalist line of reasoning: even in political systems where institutional rules, historically grown political power constellations, and bureaucratic traditions play a major role in the policy process, there is still room for leadership" ('t Hart 2000).⁵ Leadership matters particularly in those instances where there is a critical juncture. These are moments where old patterns seem to have insufficient answers for the problems at hand. Although 't Hart does not mention it himself, there is a clear

4 Original: "In de loop der jaren heb ik tegen wil en dank geleerd hoe zeer het doen en laten van deze zogeheten "machthebbers" wordt beperkt door onpersoonlijke institutionele factoren zoals wetten, regels, culturen, beleidsroutines en politieke machtsverhoudingen." Translation CG.

5 Original: "Ik trek in feite de neo-institutionalistische lijn gewoon logisch door: ook in politieke systemen waar institutionele spelregels, historisch gegroeide politieke machtsverhoudingen en bureaucratische tradities een belangrijke rol spelen in het beleidsproces, blijft ruimte bestaan voor leiderschap" Translation CG.

connection to policy windows and punctuated equilibrium theories. The other principles for 't Hart are that leadership matters, not leaders. Leadership can be exerted by many persons in a process, this is not a right reserved for the official leaders. A third principle is that power and influence play an important role in these situations. A fourth principle is that leadership is exerted by communications. A large part of leadership takes the form of speech acts. Finally, leadership is developed by fostering coalitions.

Reformers need to be opportunistic. They have to wait for the right moment in order to set a reform process in motion and keep it going. There are obstacles that prevent reforms. For one thing, reforms are difficult because routines are fixed and clear. Routines become psychological prisons for those involved. Another danger is the 'calling in the desert effect'. If you are trying to break the ruling frame, the effect can be that you will not be taken seriously. It will sooner lead to diminished influence than increased influence. This process is comparable to the process of the domestication of dissenters. This domestication "is achieved through "assigning" the role of "official dissenter" or devil's advocate to the doubters within government. In the process, the doubter's conscience is assuaged, but at the same time his position is made explicit *and predictable*. This predictability means a fatal loss of power for him; his position becomes discountable" (Hirschman 1970: 115). Finally, 't Hart stipulates that there is always conflict. There is always blocking power and there are always veto players.

't Hart wants attention for reforming communication and reforming coalition formation. It is important to be able to define the problem, which makes reforming communication important. Reforming communication that exposes the status quo as a threat to the central values of a society will have a bigger chance of success. 't Hart refers to Edelman's notion of existential feelings of insecurity among the public. Reformers burn bridges because they have to tear down the institutions that exist. Being unconnected to the existing institutions is thus important when one wants to lead a reform process. A second element of importance is the communication of willpower. Leaders that commit strongly to a cause, but not at all costs, enhance their chances of success. If a leader commits too much, he will be seen as driving it too far. Finally, when leaders succeed in communicating that their proposals are inevitable, more desirable, and better than the other alternatives to the status quo, their chances of reform success will grow.

Coalition formation also plays an important role in leading reform processes. If someone is capable of securing the support of those parties that need to carry out the reforms, the chances of reform success will increase. Forming a coalition makes the acceptance of the reform clear to all. Controlling the game also helps. The more control leaders have over the crucial forums of debate, the timing, and the rules of the policy process, the bigger the chances of reform success ('t Hart 2000). This is in line with several of the approaches we have seen above. Leadership can, for instance, reduce barriers or influence the rational calculations of political actors. Another aspect is procedural leadership, for instance when appointing staff, deciding on the composition of committees, and having agenda power as well as directing information

distribution. An important question for all leaders that has to do with procedural leadership, is whether a big bang reform or one in which the reform is implemented locally by decentralized authorities is wanted.

In this subsection, the role of political actors in reform processes has been discussed. What we have seen is that actors can have different powers available to them and have different roles in reform processes. Where we started this subsection with a discussion on the role of rationality in reform processes, we ended with the role of leadership. Leadership and the ability to develop leadership can be an important aspect of reform processes because it can determine (aspects of) the reform process. In this sense, it is like Flyvbjerg has argued: power influences what is seen as rationality, “power has a rationality that rationality does not know. Rationality, on the other hand, does not have a power that power does not know” (Flyvbjerg 1998: 234). However, the extent to which political actors can steer reform processes also depends on the context of the reform process. Political actors have to ‘role with the punches’ and make the best of the situations that they are presented with. As we have already seen the capacity to deal with crisis is an important leadership quality (‘t Hart 2000; Boin and ‘t Hart 2003; ‘t Hart 2011). In this study, a crisis is something that is part of the wider context of the reform process. In the next subsection, we will discuss the context against which reforms take place.

2.5 THE CONTEXT OF DEMOCRATIC REFORM PROCESSES

There are various theoretical approaches that deal with aspects of the context of a reform process. Based on the introduction of this Chapter, it should be clear that historical institutionalist theories will more easily match with theories that stress the importance of ingrained and difficult to change patterns than theories that stress the role of individual actors. Of course, a historical pattern can also involve strong individual leadership, so historical institutionalism does not deny the possibility of leadership altogether. In this subsection, several theories are discussed that emphasize the role of the context of the reform process. Two contextual aspects that are important for reform processes will follow from these theories. The first aspect is the general historical institutionalist context against which a reform process is taking place. The second aspect is the situational setting where such things as crises play a role in the development of reform processes.

The historical institutionalist aspect is interpreted in different ways, with some authors leaving more room for change in this long term context in their theoretical models than other authors (Putnam 1994; Flyvbjerg 1998). According to Elster et al.: “Legacies generate constraints and opportunities of action that are relatively immune from purposive action. In contrast, institutions are founded, adopted, sanctioned, continuously enacted, a subject to some element of design and alteration” (Elster, Offe et al. 1998: 293). Depending on where the boundary

between historical legacies and changeable institutions is drawn, more or less room for the interventions of political actors as dealt with in the previous subsection will be available.

Reform is the result of interactions between an institution and its environment. According to Offe, there are three reasons why an institution can break down: it can “fail to inculcate the *norms and preferences* that condition the loyalty of members”, it can “decay because *alternatives* emerge which allow for the satisfaction of those needs and the fulfillment of those functions over which the institution used to hold a monopoly”, or “institutions may break down because of their manifest failure in performing the functions with which they are charged” (Offe 1996: 219/220). Reasons for institutional breakdown are reasons for institutional reform. However, even if all these failures are present, that does not mean the institution will stop existing or that reform will necessarily take place.

March and Olsen also developed a model that became known as the garbage can model of organizational choice (Cohen, March et al. 1972; March and Olsen 1982; Koppenjan 1993; Bendor, Moe et al. 2001; Kingdon 2003). They developed this model before the New Institutionalism was coined and it is seen as an institutional theory or a precursor to institutional theories (Bendor, Moe et al. 2001). Garbage can models were developed as a response to previous choice models. These models were often based on quite rationalistic Eastonian process interpretations but were lacking in terms of their description of what actually happens.

Garbage can models are normally based on four streams that develop themselves relatively independent: 1) problems; 2) solutions; 3) participants; and 4) choice opportunities (Cohen, March et al. 1982; Kingdon 2003; Van der Steen 2009). The basic descriptive thought of garbage can models is that there are certain problems in the minds of people within and without organizations. These can be articulated, but need not have any effect. At the same time, there are people that have solutions for certain problems. Importantly, these solutions can exist relatively independent of problems. One solution can be used for many problems. Participants in processes can differ. Sometimes the numbers grow and sometimes they shrink. However, as we have seen in the theories so far, there are important differences in terms of the relative importance of participants for a decision making process. Finally, there are moments in which there are choices to be made. Not all issues are constantly scrutinized all the time. When these streams connect there is a moment in which a decision can be taken to change policies or reform organizations. However, not in all circumstances does this need to be the case.

The garbage can model is a descriptive model in which these streams are described as having some independence. The model states that these streams ‘move’ in their own right within a ‘field’ that allows them to connect. It is clear that there is some modeling going on here that can lead to criticism. Bendor et al. state: “The process-driven world of the garbage can is more than just dynamic. It is also strange and even pathological by conventional standards [...] Alice has gone through the looking glass, and nothing is as it seems. Choices happen for no apparent reason. Outcomes are divorced from intentions. Solutions are disconnected from problems. People wander aimlessly in and out of decision arenas” (Bendor, Moe et al. 2001: 171). There

are some problems with the garbage can model. Amongst other problems, it lacks a decision theory, it disregards the fact that agendas are managed by participants in decision arenas, and it sees organizational structures as exogenous to decision processes where they are not (Bendor, Moe et al. 2001).

The garbage can theory has had much influence, also because its authors later helped develop new institutionalist theories, but “[f]or fundamental reasons, the theory lacks rigor, discipline, and analytic power needed for genuine progress” (Bendor, Moe et al. 2001: 169). Compared to rational-choice theories, it is less ambitious because the theory does not pretend any predictive powers. It is a useful theory to analyze decision making processes in a descriptive fashion. The basic garbage can model provides this opportunity and it is not strange that it has been used as such. The model can be used to analyze cases in order to arrive at ex-post explanations of the causes of a reform taking place. The intersection of the streams alone is not enough, there also needs to be enough momentum based on support in the stream of participants.

Garbage can models do leave room for actions of political actors in order to steer a development in one direction or another. These political actors are policy entrepreneurs (Kingdon 2003). They seek to connect the different streams in order to make a decision possible. In this sense, they show political leadership. However, the ability of actors to create these policy windows is limited. Kingdon writes that policy windows, the moments when problems, solutions, and participants meet, “are opened by events in either the problems or the political streams” (Kingdon 2003: 203). We have seen in the previous subsection how actors can try to influence a reform process. The garbage can model teaches us that the actions of politicians are not cut loose from the wider societal context. What constitutes as an ‘event’ is not decided by politicians alone. An event is determined by the interplay between political events, the public, and political actors. Events have to do with the external environment of politics, which is what we look at in this subsection. Events such as the reunification of Germany and economic pressure are used to explain a German policy window for reform by Vetter (Vetter 2006). Van der Steen focuses on the narrative aspect of policy formation and argues that an institutional path, once set in motion, is influenced by narrative crises. Narratives that provide alternative interpretations of what happens can change the direction of an institutional path (Van der Steen 2009).

Baumgartner and Jones have developed a punctuated equilibrium model in order to explain sudden changes in policies and institutional structures (Baumgartner and Jones 1991). Baumgartner and Jones claim that incrementalism is overemphasized in theories of policy change. Instead, they argue that historically it is the case that many policies enjoy long periods of stability and short periods of dramatic upheaval (Baumgartner and Jones 1991: 1044). Baumgartner and Jones seek to bridge theories that emphasize institutional structures and those that emphasize the role of policy entrepreneurs by claiming that actors will try to control the image of the policy problem and actively go about ‘venue seeking’ in order to have the best chances of a favorable reception of their policy issues (Baumgartner and Jones 1991: 1045). “Public and

elite understanding of public policy problems may change over time. Often, these changes are the result of new scientific discoveries of research; over times, changes come from dramatic events or more subtle influences" (Baumgartner and Jones 1991: 1046). Public discourse will be focused on single aspects of an issue and thus exclude many other aspects. Through venue seeking, new ideas occasionally are able to get the upper hand on the vested policies that are protected by powerful lobbies in existing political arenas. Getting an upper hand thus depends on events outside of the political arena and the reception of a proposal by citizens. We see an interplay between the first and second aspect of the context here. On the one hand, the attitudes of citizens will generally be stable in the first sense, on the other hand, scientific discovery such as in the quote above can be the cause of crisis. Slowly developing institutional patterns and momentary crises cannot be seen as completely separate entities. Accumulated events can change historical patterns. For instance, global warming is not something that has suddenly become a problem. We have seen a series of scientific discoveries and crises that slowly change the general attitude of people towards the environment. Using a concept that is borrowed from evolutionary biology Baumgartner and Jones have later dubbed the moments when change takes place moments of punctuated equilibrium (Baumgartner and Jones 1993).

Depending on the type of policy, the number of alternative venues actors can seek out will vary. In the types of reforms that are researched in this study there are fixed venues that have to be taken into account. Still there is always a possibility to seek media attention for an issue and mobilize people around an issue (or, of course, the other way around). Some social movements are especially effective at gaining this attention (and thus finding a new venue for their issue), although the political opportunity structure definitely matters (Kriesi and Wisler 1996).

In their analysis of the introduction of direct legislation in the United States and Switzerland, Kriesi and Wisler find three crucial elements that can move a society towards 'social learning' (Kriesi and Wisler 1999: 64). The first of these is a societal crisis, which usually will be economical. This crisis might come about in various ways, it can be something that happens without direct intervention by politically motivated actors that has an impact on policies such as the scientific discoveries mentioned by Baumgartner and Jones, but also something created by politically motivated actors with resources.

Second, change will not come about, according to Kriesi and Wisler, without the availability of a credible alternative. Third, an institutional framework vulnerable to change is helpful. It goes beyond the scope of the context of the reform process that is the topic of this subsection, but it is interesting to note here that Kriesi and Wisler state that "federal systems and weakly institutionalized states are generally more vulnerable and therefore provide greater opportunities for institutional change than unitary and strong states" (Kriesi and Wisler 1999: 64). This is a point that goes against theories that deal with institutional structures and veto players that we have seen above. It is something we can pay attention to in the comparison of the cases, as Germany and Austria are federal states whereas the Netherlands is not.

A reform momentum needs to develop, which is only possible when the established elites are unable to control the masses. Finally, there needs to be a split in the political elite and weakness of political parties that results in a lack of control of parties over citizens according to Kriesi and Wisler (Kriesi and Wisler 1999). Since the time these direct democratic institutions were introduced in the United States and Switzerland during the 19th and early 20th century, much has changed. Not only have political parties become less strong (especially in the last few decades), but there has been a rise in the number of possibilities for (critical) citizens to organize themselves without the intervention of political parties or other intermediate organizations. These latter developments have resulted in ever quicker mobilization of masses by use of mobile phones and the internet (Bekkers, Beunders et al. 2009).

This subsection has shown that a focus on both the historical patterns present in society, the effects these patterns have on reform processes, and the role of sudden shocks and crisis, is viable. Again, these theories show the extent to which different theories share common elements as political actors played an important role in the theories above, as did the formal institutional structure. Therefore, in the next subsection, the different elements will be reconnected in order to develop an analytical framework for the analysis of the empirical cases.

2.6 RECONNECTING THE FORMAL STRUCTURE, POLITICAL ACTORS, AND REFORM CONTEXT

The different theories and models discussed above all share one or more elements with one another. For instance, a theory about political actors needs to state something about political institutions as well. Most basically, these theories deal with similar objects of research. This research object can, for instance, be some government organization developing policies. One difference is the extent to which assumptions are made to be able to develop a model capable of predictions. Some models assume such things as rationality in order to attempt to predict political events. Other models make no such assumptions but instead focus on structuring empirical descriptions. If such descriptive theories are aimed at explanations, they are aimed more on ex post explanations. A second difference can be found in the focus of these theories. Some view the individual as the most important element in these political processes, whereas others consider composite actors (institutions) as actors. Composite actors can be seen as the crucial factors in policy processes, but composite actors are not the only factors that matter.

Weick (1969) argues that there is a tradeoff in the social sciences between generality, simplicity, and accuracy. It is not possible to have it all ways. Understanding and explaining are different things that need to be approached differently, for instance (Elster 1979; Flyvbjerg 1998; Yanow and Schwartz-Shea 2006; Flyvbjerg 2007). Generally, a theory seems to start as a simple and elegant idea able to 'catch' what is going on in a single word or idea. This idea can be New Institutionalism, New Public Management, or Governance. After the idea has

been pitched and people seem to like it, it will be developed further by other authors. Some authors will take the simple idea and develop the idea into something that is applicable more generally, whilst others will try to develop the idea further related to some single aspect, thus gaining more accuracy.

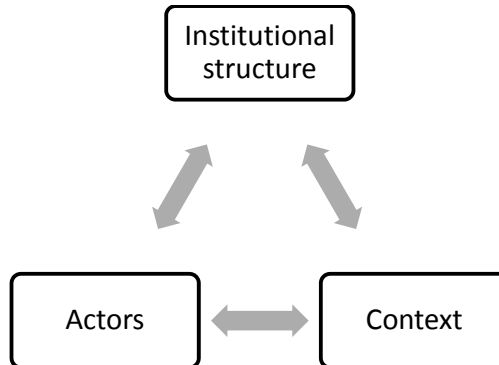
In this theoretical Chapter, different theories that deal with processes of institutional change and decision making have been discussed. These different theories were analyzed in three subsections that focused on democratic reform processes in relation to institutional structures, political actors, and context. These elements interact with one another, giving rise to all sorts of phenomena. In this study, reforms will be seen as the result of the interplay between these three factors: institutional structures, political actors, and a two-fold context, such as depicted in Figure 2.2. This figure depicts a general analytical model in which these three elements are separated and connected to one another. Any model is susceptible to critique, and so is this model. We have seen that many approaches use elements from all three these models. Furthermore, it is quite possible to argue that one of the elements of the model, say the institutional structure, influences the relationship between actors and the context, which is not depicted in the figure. This is true, but the main strength of the model is that it allows for a more focused comparison between the reform cases whilst retaining an inductive approach by not over-specifying the elements of the model, as will be shown in the next subsection.

The room the model leaves for different types of empirical realities is a strength of the model as well as a weakness. It is quite logical that context, actors, and institutional structures are concepts that can be found in a reform process, but shouldn't these concepts be developed more specifically? The model is based on different theories dealt with above and it could be made more specific, it was specifically opted for not to do this. In this sense, the analytical framework is a framework of sensitizing concepts (Haverland and Yanow 2010). In this study, no assumptions will be made about the rationality of actors, nor about the goals they strive to attain. In this study, the actions of actors will be approached without presuppositions. Whether or not these actors can be considered rational, or not, is not the issue. What matters is what they decide and what their motivations were. The approach is not normative either. There are no pretensions about what should be done or what would have been better in terms of democratic reforms.

The three factors to be investigated have deliberately not been developed too specific in order to be as open as possible for the researching of the empirical cases. No detailed hypotheses were developed, but instead the reforms were researched whilst keeping in mind the insights of these different theoretical models. Political science can be judged by standards such as describing events in a scientific fashion, furthering the understanding of what happens in political communities, and providing useful interpretations of events (Flyvbjerg 1998; Yanow and Schwartz-Shea 2006; Flyvbjerg 2007). Categorizing phenomena can provide insights (Lijphart 1999; Held 2006; Lijphart 2008; Vatter 2009). This is what is attempted in this study, to provide insight without being completely locked into one theoretical approach.

In the next subsection, the three elements of the theoretical model will be further elaborated and developed into research questions to use in the empirical cases.

Figure 2.2 Reform as interplay between institutional structures, political actors, and a wider context.



2.7 ANALYTICAL FRAMEWORK

In the remainder of this Chapter, the way the three aspects were used to research the cases will be discussed. As was the case throughout this Chapter, the contributions of different authors will not be rigidly placed in an equally rigid conceptual framework. One reason for this choice is that most theories deal with all three these elements to some extent. Another reason is that such an approach does not fit the social sciences particularly well. Although there are certainly several approaches that can be considered as fixed approaches, there is generally not one paradigm that guides the research with regard to social scientific topics (Kuhn 1996). Especially in the social sciences, lacking one dominant paradigm, it has to be kept in mind that different theoretical concepts can be used to deal with the same empirical phenomenon (Kuhn 1996: 76).

As has been explained, the framework will try to balance between oversimplification and all too complex theories of reform (Weick 1969; Schmitter 2009). We can use Renwick as an example. Renwick develops 18 propositions for different phases of a reform process, eight leadership strategies, and four path dependency mechanisms (Renwick 2010). Such an approach is more accurate because it is more extensive. However, the downside is that the approach misses a clear focus. More fundamentally, it might be impossible to be extensive. In the analytic framework, a balance will be sought by focusing on three aspects of the reform processes. The goal is to be both focused (on these three aspects) without being too specific, thus allowing for comparison, as well as having an open view towards the peculiarities of each reform case. In the subsections below, research questions are formulated that are answered

for all the reform cases. The questions are more specific than the three aspects of the reform processes, however, separate from the reform case descriptions, in the introduction of the countries in which the reform processes take place, material will be presented that makes it possible to fully deal with the three aspects that were dealt with above. The reform case-specific questions will be answered in Chapters 3 to 5, after which Chapter 6 will use the answers of these research questions as well as the information from the country introductions to reason back to these three aspects of reform processes.

2.7.1 Institutional structure

The New Institutionalism sought to move institutionalism beyond the focus on formal organizational structures and also pay attention to other aspects of institutions such as culture. In the model developed here, it is thought useful to go back to the old institutionalism with its focus on formal rules. This is not to say that the cultural aspects of the New Institutionalism do not matter, on the contrary. Institutionalism's cultural aspects will not be dealt with by formulating a research question dedicated to these aspects. These more cultural tendencies are dealt with in relation to the countries in which the reforms take place and are thus seen as part of the reform context. In this study, the institutional structure involved in reforms consists of the formal process that has to be followed in order to get the reform passed.

The focus on the formal aspects makes a connection to rational-choice oriented theories possible. We can distinguish the formal procedure that has to be followed in order to pass the laws required for a specific reform. In the case of this study, these will be democratic reforms that often require constitutional changes and constitutions are often more rigidly fixed than normal laws. Furthermore, depending on the types of majorities required and the number of votes that have to take place in order to pass a law, reform can be more difficult or easier to pass. Each extra vote is another barrier that has to be passed. Tsebelis generally views mandatory referendums as the introduction of an extra veto player, but he does acknowledge the fact that referendums change the way reform processes develop in a broader sense; making the results come closer to the general opinion of the citizens of a country (Tsebelis 2002). In this study, referendums are not seen as veto players, especially not when they are not mandatory but can be initiated by a group of people or a group of parliamentarians (or a combination thereof). In some situations referendums can work as institutional crowbars instead, prying open institutional room for reform. When referendums can be and are used in such a way, otherwise rigid formal procedures can be set in motion more or less externally from the parliament. The extent of parliamentary involvement will depend on the required involvement of members of parliament to organize referendums. In order to compare the reform cases, for each reform case the following question will be answered:

What formal procedure has to be followed in order to get the reform passed?

In order to answer this question, the formal reform procedures were researched for the different countries by using academic literature and (web-)publications of different involved gov-

ernments. The formal process matters, because it provides a structure with which actors need to work. For example, in Tsebelis' typology the Netherlands, Austria and Germany deviate from each other in terms of veto players. Austria gets 2 points for veto players (the more the higher) and -4 for agenda control (the more control the higher the number); the Netherlands gets 3 and -7; and Germany -3 and -4 (Tsebelis 2002: 182). These figures refer to the national level, but are interesting to keep in mind none the less. Based on these figures, we would expect change at the national/federal level to be most difficult in the Netherlands and Germany based on the number of veto players and the low level of government control.

2.7.2 Political actors

The formal procedures are only written words until political actors set reform processes in motion. The actors involved in political processes can be anyone or anything. In this study, room is left for individual actors as well as composite actors. Composite actors can be any organization or group of people that acts as a collective. Which is not to say that that the actors in these groups have to agree unanimously with the course set out. In the case of democratic reform processes in the three countries at hand, the most important composite actors will be political parties deciding on the reform. These parties will have to negotiate amongst each other in coalition-type situations in order to get a majority (which will be required by the formal institutional structure) that is sufficient to pass the reform. However, these parties are comprised of individuals, so there will also be internal debates about the positions of the political party. Some party members can become quite influential or dominant through time. The same goes for individuals that acquire some formal position of influence, such as the position of the prime minister, for instance. Furthermore, there are also individuals that split from their political party but retain their parliamentary seat for an amount of time. These individuals can become influential as individuals because of their position.

There are many different types of groups that can be of influence. Interest groups of all sorts, groups of researchers or civil servants, perhaps producing policy documents (Koppenjan and Klijn 2004). One special group in the case of democratic reforms in democracies is 'the people'. Citizens are the fundamental foundation of the legitimacy of democratic states, whilst at the same time citizens are not involved in politics most of the time. Only in those states with direct democratic instruments do citizens have a direct say in the governing of a state. In other instances citizens are represented. Representative structures will develop routines and cultures that will have both positive and negative effects. In recent years, even when no formal democratic instruments are in place, citizens increasingly are provided with room to vent their opinions through other media than the ballot box, such as through opinion polls (Andeweg and Thomassen 2011; 2011b).

As for the motivations of these different actors, there are two basic motivations that can play a role in the decision making process of actors if they are interested in a topic. These two motivations are ideological and personal. These two motivational factors can overlap, as they

are not necessarily mutually exclusive. If actors are not interested in a topic or have no interest in a topic, actors can just as easily tune out or (in the case of composite actors) simply go along with the general line of the group or organization. Most of the rational-choice theories argue that personal utilitarian motivational factors are dominant. However, political parties are not only vehicles of power, they are also groups of individuals that want to achieve certain ideological goals. Individuals in these parties, as well as the parties as a group, will have to weigh certain ideological goals that might be attained against personal goals. An unpopular decision can be ideologically consistent on the one hand, but cost in terms of electoral result on the other. In those cases a political party has to decide what course it will follow: opt for short term ideological success and lose electorally or let that one point go and perhaps win some other ideological point (later) because of electoral gains. Such considerations can often be found amongst political actors. The question posed to deal with the involvement of different actors therefore is the following question:

What actors are involved in the process, what seem to be the goals of these actors, and how do they try to achieve these goals?

In order to answer this question, different types of actors will be distinguished. We have distinguished between individual actors, political parties, citizens in general, and other actors, these will be considered for the cases and discussed when relevant. For the actors that are involved the goals will be noted. Finally, slightly overlapping the first question, the powers these actors have to influence the reform process will be noted. Some of these powers might be formal (to demand a referendum) others more informal (organize media attention). Academic and other publications will be used to research this question as well as interviews with participants in the reform processes.

2.7.3 Wider context: Historical background and situational circumstances

Whether situations wherein reform is a serious possibility come about is dependent upon the wider context in which political actors are operating. Context is used in this study as a historical background against which processes take place and specific situational circumstances. We have seen that several authors stress the role of crises in reform processes (Kriesi and Wisler 1996; Boin and 't Hart 2003; Kingdon 2003; Koppenjan and Klijn 2004; Van der Steen 2009). A crisis is an event that takes place that changes the perception of the status quo and causes political considerations to change. A crisis can surface within the political arena in its normal operating modum in the interaction between the institutional structure and the actors, for instance when there is a major shift in the electoral result. Major shifts in preferences of citizens as espoused by electoral results or other forms of opinion communication can very well have an immense effect on many topics that were deemed fixed beforehand. Often, however, crisis will surface externally to the political arena, such as an economic crisis that forces change (Kriesi and Wisler 1996; 't Hart 2000). Non-economical crises can also play a role, such as

a scandal about a policy-rules or misconduct. Normally, crises will function as case specific situational circumstances.

Context in its more historical institutional sense, formulated as the stable patterns of dealing with one another is also considered in this study (Zijderveld 1983; Putnam 1994; Flyvbjerg 1998; Ziemann 2009). Context in this sense, is part of a historical background against which a reform process takes place. Whether or not (reform) ideas are deemed acceptable is not fixed within the political system. In principle any proposition can be debated within the political arena. Still, political parties have to take notice of the 'do's and don'ts' that are provided by the history of states. Some ideas will seem appealing whilst others will probably seem less appealing because of the shared values of citizens in general or some particular subgroup of citizens (Hendriks 2010; Hendriks 2011). This limits the scope of politics. The following question will guide the research into the context of the reform cases:

Against what historical background did the reform processes take shape and what case-specific situational circumstances seem to be of influence?

This question of historical background and situational circumstances is in a sense the widest of the empirical questions. It relates both to those things happening during the reform process that influenced the process and the historically ingrained institutional patterns within the individual countries. In Chapter 1, some of the wider historical developments in the different countries have already been noted, and these developments will be expanded on in the country chapters. Besides this historical background, the situational circumstances will be researched that had an influence on the reform processes. The distinction between the historical background and the situational circumstances is not fixed: situational circumstances such as electoral volatility can become part of the historical background against which reform processes take place. Even though this distinction is not rigid, for those involved in the reform processes there is a clear distinction between the historical background and those circumstances that had an immediate effect on the reform process. Therefore, whilst the historical background will be based only upon academic literature, the situational context will also be developed based on interviews.

Most theories discussed above focus on the interplay between two or even the three aspects of the analytical framework model developed in this Chapter. It can be argued that many of the aspects that have been attributed to one of the three main factors above could also be placed between two of those concepts. To a certain extent this is logically the case. The motivations that could be attributed to actors have been divided into personal and ideological gain. Obviously, ideological gain is not something that is only connected to an individual actor, but will often have something to do with the context. Furthermore, as democratic reforms deal with changes to institutional structures, ideological gain (as well as personal gain) will depend on the institutional structures in place. The three empirical questions are broadly formulated so that these various elements can be dealt with as part of the three empirical questions.

2.7.4 Comparative questions

The three empirical questions are answered by subsequently providing an introduction on the institutional context of the reform, describing the formal procedure to be followed per case, and offering a more detailed description of the full reform process as it happened. After this description has been provided, the questions above will be answered. However, in order to say something more general about all the reform cases some analytic question needs to be answered. First, a question has to be asked for the comparison between the cases in the respective countries. This question is based on the three questions posed above.

What are the common elements of and the differences between the reform cases within the individual countries?

After this question has been answered for the respective countries, in Chapter 6 these analyses have to be compared.

What are the common elements of and the differences between the reform cases when the three countries are compared?

2.8 RESEARCH TOOLS AND METHODS

In order to be able to describe the reform process and answer the research questions posed above, two research methods have been used: document analysis and interviews (Babbie 2001; Robson 2002; Abbott 2004; Boeije 2006; Yanow and Schwartz-Shea 2006; Flyvbjerg 2007; Van Thiel 2007; Booth, Colomb et al. 2008).

Three types of documents have been used: A) transcripts of parliamentary meetings; B) other documents related to the reform process such as newspaper articles, commission reports, and other parliamentary documents, and; C) (academic) analyses of other authors of the reform process. In all cases, the starting point was to search for existing scientific analyses of the reform process. Especially in the German cases these analyses were ample (in the respective chapters references are noted), so that this is the main source of information for the reforms in Germany. Sometimes these authors are journalists, sometimes scientific researchers. In the Dutch and Austrian cases, there were no extensive process-oriented analyses that discussed these reform cases. Therefore, other documents played a bigger role in these cases. Transcripts of parliamentary debates were generally available. Appendix 2 lists the debates that have been studied, as well as some 'miscellaneous' documents that have been studied to get a full view on the reform process. In Austria, debates in Parliament only took place after an agreement on the matter had been reached in parliamentary commissions of which no transcripts were available. In these cases, parliamentary debates were really meant to recap the arguments in favor or against a reform case, but the interviews provided additional information. The analysis of these debates has been built mainly on the debates in Parliament in which a vote on the reform proposal took place. In these debates, political parties and individual politicians want to stipu-

late the main reasons they have to support or block a reform proposal, so that these debates offer a recapitulation of the reasons that parties support a reform or do not support a reform. Insofar as these reasons were relevant they were taken into account. The decision whether these reasons were relevant or not was based on the effect of the reason on the reform process and on the basis of the interviews. Sometimes other documents were also available, such as policy documents, diaries of politicians and the like. These documents provided additional (and sometimes more personal or more technical) information regarding the reform process.

The decision on the relevance of all the arguments used by politicians was also based on interviews with those persons that have played a role in the reform process (see Appendix 1 for a list of interviewed persons). These interviews were meant to get a sense of what was happening behind the scenes of the parliamentary debates. How did those involved in the reform process experience the reform process and what were the important moments for them? The persons selected for interviews were the politicians involved in the reform processes in parliaments, most notably, the spokespersons on the topic. Initially, in the first case that was partially researched, the case of the introduction of directly elected mayors in the Netherlands, several civil servants and representatives of groups that lobbied for their cause were interviewed. However, the content of these interviews did not change the view on that initial reform case when compared with the interviews of politicians. The first German case to be researched was also the introduction of directly elected mayors. Besides interviews with scientists that had published on the matter two interviews took place with a politician and a civil servant. These interviews showed a similar picture as the first Dutch case and corresponded to the analyses that were published in different academic publications. Therefore, no additional German interviews were planned and in the remaining other cases no interviews with civil servants were planned.

The persons to be interviewed were mainly the spokespersons of the different political parties (especially the larger political parties in the Dutch case). In some cases, such talks were no longer possible because the person had deceased. In other cases, respondents did not respond or were unwilling to participate in the research project. Often politicians would be involved in both the reform cases in some way (as they were active in politics in that time period). The interviews were open interviews that allowed the respondent to recall his or her experiences in the reform process as much as possible, without the interviewer drawing attention to specific aspects. The buildup of an interview consisted in the interviewer giving the respondent a general introduction on the research project. In this introduction it would be made clear that the topic of interest was a comparison of Dutch reform cases with German and Austrian reform cases, with a focus on the development of specific reform processes. After this introduction the interviewer asked about the experiences of the person involved in the reform process. After the general reaction of the respondent additional questions would be posed that would focus on specific aspects of the reform process, such as the relationship with other political parties and within the party of the respondent, the role of other actors,

and the considerations that guided the political parties in their decision-making. Of course, because the reform processes often were set in motion quite a while back not all respondents could readily recall everything that happened. However, when some additional historical facts were mentioned by the interviewer most respondents could recall more information. The interviews showed that there were processes at work that were not openly debated in Parliament most of the time, such as negotiations within parties and between parties on the matter of the reform. Especially in consensual situations, in which multiple parties have to agree, a search for support among parties can be important. In some instances more interviews have taken place in order to get additional information or to resolve seemingly conflicting recollections of respondents.

Based on the transcripts, other documents, and interviews, an intersubjective case description could be construed in a relatively inductive fashion in order to have a description of the reform process 'as it was', without pre-determining all the elements that would be focused on (Robson 2002; Bevir 2006; Yanow and Schwartz-Shea 2006). Instead, the three aspects of reform processes developed in this Chapter served as sensitizing concepts without forcing the cases in one direction or another. A finalized version of the Chapter with the German cases was fact-checked by the German emeritus Professor Helmut Wollmann and a finalized version of the Chapter with the Austrian cases was fact-checked by the Austrian Senior Scientist Franz Fallend of the University of Salzburg. As will be shown later in this study, despite of the differences between the cases there is a considerable overlap in the types of considerations politicians have that play a role in these reform processes.

2.9 SUMMARY

In this Chapter, different types and aspects of theories that have something to say about reform processes have been discussed. There are many theories available that discuss aspects of reform processes and these theories often overlap at least partially. There are institutional theories that focus on the influence of history on processes in the now. There are theories that focus on the rational choices made by actors in these processes. There are theories that focus on the number of actors involved in processes and the effects thereof. It has been argued that these theories all provide valuable insights into the workings of institutions and reform processes within democratic institutions. At the same time, it has been argued that the development of these theories has led to either too focused theories – focusing on too narrowly and specifically defined aspects of an empirical phenomenon – or too complex theories – introducing so many different factors and aspects that it becomes impossible to use these theories to understand reform situations in earnest.

In this Chapter, therefore, an analytical framework was developed that takes three basic concepts – institutional structure, political actors, and a wider context – and uses the interac-

tion between these three concepts as a model to analyze different reform cases. The empirical realities of the cases determine which aspects are more important than others in a specific reform case. In some reform cases more actors matter than in other cases. In some cases these actors will be differently motivated than in other cases. Institutional structures matter because these structures define the procedures that need to be followed and the different possibilities for actors to influence these procedures. Finally, the wider context is a category that considers both the historical background in the form institutional patterns within the countries and the situational circumstances that play a role in the specific reform cases. Attention was also given to the methodological considerations that led to a focus on document analysis and interviews as core techniques of information gathering.

Olsen stated that “[i]t is commonplace to argue that political institutions are a source of inertia and resistance to change. Institutions are seen as excessively static and likely to remain on the same path unless some effort is made to divert them. It is also commonplace to claim that the ‘New Institutionalism’ as an approach to political life is not useful for making sense of institutional change, planned or not” (Olsen 2009: 3). In the next three chapters, we will see to what extent democratic reform can be understood from the theoretical perspective developed in the current Chapter.

Chapter 3

Democratic reform processes in the Netherlands

3.1 INTRODUCTION

In this Chapter, the Dutch reform cases will be examined. Descriptions of the way the two reform processes developed will be offered. After each description an analysis of the reform process will be offered. This analysis will be based on the analytic framework that was presented in the previous Chapter. The two reform cases will be briefly compared with each other. Before these reform processes are presented, the historical background that has to be taken into account when trying to understand the reform processes will be discussed.

3.1.1 Background: a (historical) sketch of Dutch political institutions

Consensual politics: a part of Dutch history

The development of the modern nation-state has not left the Netherlands unaffected. The Dutch state – in terms of borders, inhabitants, and political institutions – is not exactly the same state as it was 200 years ago. Borders have changed, the inhabitants have changed, and institutions have changed. Democratic access has increased and the scope and types of policies has expanded. Although there have been important moments of change throughout history, there is not one all-changing rupture to be found. Historically grown practices continue to matter, as is often the case (Bovens and Hendriks 2008; Hendriks and Bovens 2008). So, despite the fact that much has changed, there is also important historical continuity.

An important historical fact for instance, is the present Constitution that was created in the 19th century, 1848 to be exact, by a liberal (in the European sense of the word) politician called Johan Rudolf Thorbecke. Until this day, politicians often speak of the ‘House of Thorbecke’ (*‘het Huis van Thorbecke’* in Dutch) when they refer to the basic institutional structure of the Netherlands. In schools and universities (we do it too) pupils are taught the phrase. The metaphor provides ample rhetorical possibilities for critics – all sorts of variations on a house that is collapsing or needs to be renovated can be thought of – as well as supporters – that can prize it not only as a house but as a home, or the stability the structure has provided –, so the appeal of the metaphor is apparent, even if it is not all too accurate (Toonen 1987).

One of the main elements of the ‘House of Thorbecke’ consists of the division of the Dutch political system into three basic layers: national government, provincial government, and municipal government (Derksen and Schaap 2007; Breeman, Van Noort et al. 2008). The history of the Dutch republic is well studied (Schama 1987; Daalder 1990; Israel 1998; Randerad and Wolfram 1998). An important feature of the Dutch republic was that it was no centralized state but instead more like a (con)federation in which the states (*Holland, Zeeland* etc.) were very powerful. Within these states the cities were very powerful. There was a strong tradition of decentralized government. This was only changed under the influence of the French, first with the *Bataafse Republiek* (Batavian Republic) in 1795, and later by the French occupation early in the 19th century (1806), which imposed a more centralized (Napoleonic) structure (Andeweg

1989; Randeraad and Wolffram 1998; de Vries 2006). The three tier layering of government such as later developed by Thorbecke was not meant as a French-style centralized structure with a dominant national tier, but as an organic structure in which the three parts would need to cooperate in order to rule the country (Toonen 1987; Hendriks and Schaap 2011: 97).

Whilst the three tiered structure still exists, a major change has been the increasing dominance of the central government in The Hague over the other levels of government throughout the years since 1848. Increasingly, it has been the central government that has decided on the policies that were to be implemented at the local level. The level of autonomy has decreased throughout the years because the number of commissioned tasks and the budgets prescribed to those tasks have grown relative to the budget freely available to subnational authorities. However, many of the tasks that are commissioned to the subnational authorities still leave considerable room for interpretation. Because there are freedoms in interpretation, organization, and implementation, subnational authorities in the Netherlands should certainly not be seen as mere executioners of policies to the letter (Toonen 1987; Engbersen 1990; Toonen 2000; Tops 2007; Van Ostaaijen 2008; Lipsky 2010). Another change has been that the local level has become decidedly less local through the years. Whereas there were over a 1000 municipalities midway through the 20th century, on the first of January 2012 there are only 415 municipalities (Centraal Bureau voor de Statistiek 2011).

An important element of the “House of Thorbecke” was that his Constitution took away power from the monarch and made Parliament and cabinet the centers of power in the Dutch state. In fact, the main reason Thorbecke was working on a Constitution was because the ruling (and at that point still very powerful) King was afraid he would lose his position when he looked around at the revolutions underway in many European countries at the time (1848). The way Thorbecke diverted responsibility away from the King was by writing that the king was infallible and his ministers were responsible. Afterwards, and not without debate about the matter, this was interpreted in such a way that a King could not be infallible if he actually ruled himself, actively taking decisions. It must be that the ministers were to be in charge, whilst the King was to be a more symbolic head of state. Thorbecke thus diverted responsibility from the King to his ministers, who could be held accountable by Parliament (Andeweg 1989; Belifante and de Reede 2002; Verheugt 2002). In essence, this created the Dutch constitutional monarchy that we still have today. Besides these elements, there are more elements of Thorbecke’s Constitution that (in some form) have survived until today (Toonen 1987; Derksen and Schaap 2007; Schaap 2011).

Thorbecke’s Constitution, although revolutionary in some notable aspects, was in many cases a continuation of existing practice. This existing practice was considerably shaped by the abovementioned French period (Andeweg 1989). Although this French period led to considerable institutional changes there was notable continuity as well, mainly in the culture of the political elites. The claim that the Dutch political process is too cumbersome and slow could

be heard almost 400 years ago just as it can be heard today (Schama 1987; Panhuysen 2005; Andeweg and Thomassen 2011; 2011b).

The governing culture in the Netherlands has been heavily affected by the 'three Cs' of consultation, consensus and compromise. The three Cs create a highly consensual democracy (Daalder 1990; Hendriks and Toonen 1998; Randeraad and Wolffram 1998; Van Waarden 2002; Hendriks and Schaap 2011: 98). Dutch political culture is based on series of discussions, inching forward to reach a relatively inclusive consensus. In recent years, we may be seeing a slight move towards a more confrontational style of politics (Pennings and Keman 2008; Hendriks 2010; Andeweg and Thomassen 2011; 2011b). However, the long tradition of consensual politics in the Netherlands also has its counterpart in the institutional structure of the Netherlands, a structure that is not suitable for politicians that wish to singlehandedly dominate politics (Lijphart 1975; Daalder 1990; Duyvendak 1998; Randeraad and Wolffram 1998). It used to be a cultural and in some cases a formal requirement, that a large majority was needed in order to change policies and institutions. To exaggerate a bit, it would be seen as favorable if the opposition voted in favor of cabinet policies. Because of the development of less consensual politics, the cultural requirement of consensus has been less pervasive, although it has not disappeared. A formal requirement of a formidable base of support, as shown by a large or qualified majority or majorities before a fundamental change can be made to important policies or institutions, is still in place in the form of the rigid Dutch Constitution (Andeweg and Thomassen 2011; 2011b).

Political structure and political developments since the Second World War

Compared to the time of the Dutch republic in the 17th century, the Netherlands is now a much more centralized country (whilst retaining an important role for local democracy, as was discussed in the previous section). Central government is shaped as follows. At the national level there is an Upper House or Senate (*Eerste Kamer*) and a Lower House (*Tweede Kamer*). The Lower House is seen as the more important and more influential House. The *Tweede Kamer*, counting 150⁶ members, is elected proportionally with the entire country functioning as the voting district and no qualified threshold, such as the 4% threshold in Austria and the 5% threshold in Germany at the federal level (Pelinka and Rosenberger 2007; Schmidt 2007). To win a seat in the House one has to get enough votes to claim at least one seat (1/150th of the total share of the votes). Although it is not inevitable, this system often leads to the presence of several smaller parties in the *Tweede Kamer* (such as smaller Christian parties, and currently a party whose main electoral theme is animal rights) and thus a fragmentation of the political landscape. This fact is illustrated by Table 3.1, in which the development of the composition of the membership of the *Tweede Kamer* after the Second World War is shown.

6 Before 1956 it was 100 members, and under the Rutte Cabinet a debate on bringing the number of parliamentarians back to this number has been opened.

Table 3.1 shows a picture of a large variety of political parties entering the *Tweede Kamer* and leaving again. This development might seem more erratic than it actually was. The CDA (Christian Democratic Appeal), a major player in Dutch politics the last 30 years, was the result of a fusion of several smaller (and to some extent up to the fusion opposing) Christian parties (the CHU, ARP, and KVP). The other two historically constant elements in the Dutch political landscape, are the (liberal) conservative VVD (Peoples party for Freedom and Democracy), and de social-democratic PvdA (Labor party). From the 1960s onward the left-leaning liberals of D66 (Democrats 66) joined the political landscape and won quite some seats at certain points. Furthermore, a relatively stable factor has been the presence of several smaller (more radical) Christian parties (SGP, CU – itself a result of the fusion of the RPF and GPV), and several left-leaning parties (such as the SP and GroenLinks). It is clear that coalition building becomes important, and consensus is vital in order to make decisions (Hendriks and Schaap 2011: 99). In recent years, the difficulties of forming coalitions has increased due to the fact that there are now multiple parties with sizable shares of parliamentary seats, compared to the historic situation of a dominance of a few bigger parties combined with several very small parties having seats in Parliament (Pennings and Keman 2008).

The possibilities to form government coalitions have become more complicated in recent years, because the increased and increasing splintering of the political landscape is combined with growing electoral volatility (Aarts and Thomassen 2008; 2008b; Mair 2008). Already in the 1990s, a trend towards more and smaller political parties in the *Tweede Kamer* becomes visible, even despite the fusions of political parties. This trend becomes more pronounced with the advent of the new millennium, in which parties win and lose large numbers of seats with each new election. Winning more than 10 seats out of the blue, but losing them only an election or two later, is no longer unusual in Dutch politics. This trend can, to some extent, be linked to the rise of populist parties that claim to have more feeling for the actual needs of citizens than the detached political elites that have ruled the country up to that point. The first signs of this development, were the livability parties that won seats at the local level (Boogers and Schaap 2008; Van Ostaaijen 2010; Hendriks and Schaap 2011: 99). Quickly these parties led to new (populist) movements at the national level, such as the LPF (*Lijst Pim Fortuyn*) and later Geert Wilders' PVV (Party for Freedom) gaining strong national support.

The LPF is a good example of the volatility that can be caused by the sudden rise of populist parties. The LPF was led by Pim Fortuyn, who was shot dead by a radical environmentalist shortly before the elections of 2002. In the wake of this shooting, the LPF won 26 seats in Parliament. However, without their political leader present this newly established political party was rudderless, and could not deal with the governmental responsibility they received. This quickly led to a Cabinet crisis followed by new elections in 2003 in which the party lost a substantial number of seats, returning in Parliament with only 8 seats. In the following years the place in the political spectrum was assumed by other parties and the LPF lost all their seats in the *Tweede Kamer*. The volatility in Dutch politics can be further illustrated by the last election

	'46	'48	'52	'56	'59	'63	'67	'71	'72	'77	'81	'82	'86	'89	'94	'98	'02	'03	'06	'10
KVP	32	32	30	49	49	50	42	35	27											
ARP	13	13	12	15	14	13	15	13	14											
CHU	8	9	9	13	12	13	12	10	7											
CDA [^]										49	48	45	54	54	34	29	43	44	41	21
SGP	2	2	2	3	3	3	3	3	3	3	3	3	3	3	2	3	2	2	2	2
GPV						1	1	2	2	1	1	1	1	2	2	2				
RPF											2	2	1	1	3	3				
ChristenUnie [^]																	4	3	6	5
KNP		1	2																	
RKPN									1											
LPF																	26	8		
Leefbaar NL																	2			
PVV																			9	24
PvdV	6																			
VVD		8	9	13	19	16	17	16	22	28	26	36	27	22	31	38	24	28	22	31
BP						3	7	1	3	1										
DS'70								8	6	1										
NMP								2												
CP												1								
CD														1	3					
D66							7	11	6	8	17	6	9	12	24	14	7	6	3	10
PvdD																			2	2
PvdA	29	27	30	50	48	43	37	39	43	53	44	47	52	49	37	45	23	42	33	30
CPN	10	8	6	7	3	4	5	6	7	2	3	3								
PSP					2	4	4	2	2	1	3	3	1							
PPR								2	7	3	3	2	2							
EVP												1								
GroenLinks [^]														6	5	11	10	8	7	10
SP															2	5	9	9	25	15
AOV															6					
Unie 55+															1					

Table 3.1 Political parties in the Tweede Kamer 1946-2010*

Source: (Kiesraad 2011)

* In 1956 the number of seats in the *Tweede Kamer* was raised from 100 to 150.

[^] Dutch politics has seen several mergers of political parties. CDA is a merger of KVP, ARP and CHU. ChristenUnie is a merger of GPV and RPF. GroenLinks is a merger of CPN, PSP, PPR, and EVP.

results compared to the previous election. Whereas the CDA and the leftist SP (Socialist Party) lose a significant amount of their seats, VVD, D66, and the PVV – that only entered the *Tweede Kamer* in 2006 but already won 24 seats in the 2010 elections – emerging as big winners. This

electoral result led to a rather unique situation for Dutch politics, namely a minority government with support from the PVV.

The *Eerste Kamer* has a somewhat different dynamic from the *Tweede Kamer*. To start with, it has half the amount of members, namely 75.⁷ These are members, furthermore, that are elected indirectly via the Provincial Councils. Although they are elected via the Provinces, the Senators in the Upper House are not representatives of their respective Provinces. They operate in factions as in the *Tweede Kamer*. The Members of the *Eerste Kamer*, in contrast to those in the *Tweede Kamer*, are normally not full-time politicians (Bovens, 't Hart et al. 2007; Breeman, Van Noort et al. 2008). Because the politics of the *Eerste Kamer* demand less time of its Members, most Members have some other (part-time) function in society, be it an academic function or a function in a private company, whilst they are a member of the *Eerste Kamer*. Frequently, Members of the *Eerste Kamer* have already had a political career in the past and use this experience in the *Eerste Kamer*. Both Houses are officially elected for four years, although the Lower House often fails to make it through these four years due to Cabinet crises. Normally, after a crisis, new elections follow. New elections, however, are not a possibility for the *Eerste Kamer*.

The Dutch *Eerste Kamer* is a strong Upper House. It has the formal power to completely reject legislative proposals. It has no right of amendment, although informally it can threaten the government to reject a proposal unless a *novelle* (a legislative proposal to change legislation that is still pending a vote in the *Eerste Kamer*) is accepted by the *Tweede Kamer* (Belinfante and de Reede 2002; Breeman, Van Noort et al. 2008). When a qualified majority is needed in the *Tweede Kamer*, one is also needed in the *Eerste Kamer*. The main focus of the *Eerste Kamer* is the quality of legislation that is agreed upon by the *Tweede Kamer*, but party-political considerations do play a role in the consideration of what constitutes quality. Even though it is a strong House, the *Eerste Kamer* normally receives relatively little attention from media, unless there is something quite specific going on. As was stated by a member of the *Eerste Kamer* in an interview: “nobody hears of the work we do unless it goes wrong”. Several members of the *Eerste Kamer* have lamented in interviews that “the quality of legislation passed by the *Tweede Kamer* has deteriorated in recent years”. These developments have led to a more critical *Eerste Kamer*. It has been stated about the *Eerste Kamer* that it is increasingly becoming an institution that draws its own political conclusions, instead of an institution focused on the quality of legislation.⁸

The *Eerste Kamer* shows the same development as the *Tweede Kamer*, with an increasingly volatile composition of the Senate as a result (Kiesraad 2011). For years the CDA, PvdA, and VVD have dominated the *Eerste Kamer*, with the same small (D66, Christian and Left) parties also having a presence in the *Eerste Kamer*. The fact that the electoral threshold is higher in

7 Before 1956 it was 50.

8 Source: <http://www.nu.nl/politiek/2520550/zorgen-politiek-woorden-van-senaat.html> visited on the 9th of August 2011.

the *Eerste Kamer* due to the lower number of seats and the fact that citizens have to show up for provincial elections (which attract less voters), might have dampened volatility somewhat throughout the years. However, from the 1990s onward, volatility becomes ever clearer. The last elections of the *Eerste Kamer* in 2007 and 2011 underline the trend of splintering and volatility in the *Eerste Kamer*. The three traditionally dominating parties are getting smaller, and other parties much bigger, such as the SP in 2007 (from 4 to 12), and the PVV in 2011 (from 0 to 10 seats).

Reasons for the increased volatility can be sought in different places. In both these Houses the effect could be caused by a more general sense of discontent and lowering levels of trust (Norris 1999; Pharr and Putnam 2000; Elchardus and Smits 2002; Stone 2002; Stoker 2006). It could be caused by a lack of responsiveness amongst political parties on some changing dimensions of voter demands (Inglehart 1999; Aarts, Thomassen et al. 2000; Hay 2007; Aarts and Thomassen 2008; 2008b). Another factor could also be, that politicians at the national level do not provide citizens with many opportunities to influence policy more directly, because the institutional structure required for that is lacking (Mair 2008). For instance, the 2005 advisory referendum on the European Constitution was the first national referendum in the Netherlands since 1797 (Steur 2005: 100; Hendriks and Schaap 2011). The rejection of the referendum was viewed as a defeat for government. It was interpreted by some as a vote on the popularity of the ruling Cabinet as well as the European Union, instead of the Constitution. The result of the referendum was interpreted as evidence that Dutch citizens cannot deal with referendums and that this experience should be a lesson on the detrimental effects of referendums. The constitutional referendum was passed as a special law for this particular advisory referendum, but further, more structural democratic reform has been blocked by the *Eerste Kamer* in several instances.

3.1.2 *Moving towards a different democracy?*

It is clear that Dutch politics has become less stable in recent years, and that discontent has grown (Aarts and Thomassen 2008; 2008b; Bovens and Hendriks 2008; Hendriks and Bovens 2008; Keman 2008; Mair 2008; Pennings and Keman 2008; Andeweg and Thomassen 2011; Andeweg and Thomassen 2011). However, the fact that new parties arise on the scene and that demands are made to change the (workings of) the political system is hardly new. It is a normal element of democratic systems that parties can challenge the goals that are set, the way these goals are reached, but also the way decisions about these goals and policies are taken. Whether or not new parties can find an effective ideological base to get electoral support, is another matter (see Hirschman 1970 on electoral differentiation in two party systems), as is the success of political parties.

A prime example of a new political party entering the political arena, was the establishment of D66. The context of the arrival of recent new political parties is now different from the context in 1966, when D66 entered the political scene, but both then and now there was an

electoral program that fed the creation of these new political parties. D66 was a surprising entrant on the political stage in a time when the sudden rise of new parties was not yet as normal as it is now. With the help of their charismatic leader, Hans van Mierlo, they managed to win 7 seats out of the blue in the 1967 *Tweede Kamer* elections. Their program was aimed considerably at democratic reform and the institutional structure of the Netherlands. They pleaded for more direct (American style) democracy in the Netherlands.

More than 40 years later, D66 has been a member of several Cabinets. Issues of democratization became a persistent element on the political agenda, not the least because D66 continued to emphasize them. There have been many smaller and larger changes to the political structure of the Netherlands, such as more transparency and other democratizing steps such as complaint procedures and opening certain issues up for trial in courts, but some of the more striking reforms D66 desired have failed to come through. So to this day, D66 can claim institutional weakness to be a cause for the rise of new political parties and find support for this claim (for instance: Mair 2008). It is not unfair to state, that only those reforms have been passed that did not significantly alter the relationship between citizens and the political elite by structurally giving citizens extra possibilities to vote on issues that mattered.

Hendriks explains this as a tendency of democracy types to reinforce themselves whilst resisting 'mixed' forms of democracy (Hendriks 2010; 2011). Democratic reforms have been known as the 'crown jewels' of D66. D66 is often viewed as a party interested mainly in these 'crown jewels' and one can question the merits of this identification. Hirschman has argued that the strategy of voicing critique (as opposed to 'loyalty' and 'exit') becomes null, once this voice becomes predictable. He refers to the work of James C. Thomson and states that the "*domestication of dissenters* [...] is achieved through "assigning" the role of "official dissenter" or devil's advocate to the doubters within the government. In the process, the doubter's conscience is assuaged, but at the same time his position is made explicit *and predictable*. This predictability means a fatal loss of power for him; his position becomes discountable" (Hirschman 1970: 115).

In this Chapter we look at two of the reforms to the Dutch democratic system that have been lingering for several decades now, the introduction of direct mayoral elections and the introduction of a national corrective referendum possibility. In both these cases, an important factor was that a constitutional amendment was necessary to pass legislation that would effectuate these reforms. In order to amend the Constitution both the *Tweede Kamer* and the *Eerste Kamer* have to vote in favor of the proposed reform in two rounds. In the first round a normal majority is required of 50% +1, after which elections have to take place. After these elections a qualified two-thirds majority is required. It used to be the case that elections were required for both the *Tweede* and the *Eerste Kamer*, but as of 2002 the re-election of the *Eerste Kamer* was cancelled because the re-election of the *Eerste Kamer* does not always change much to the membership of the *Eerste Kamer*. Only when provincial elections take place in the mean time, major changes are possible. When there are no elections the Provincial Councils do not

change their composition and as the Provincial Councilors elect the members of the *Eerste Kamer* the *Eerste Kamer* (normally) does not change its composition in these circumstances. This system with two rounds can be seen as a quasi-referendum on a constitutional change – the thought being that political parties can campaign on the basis of the proposed constitutional change procedure. In reality, numerous other issues can be at least equally important as the proposed constitutional amendment.

In the next sections, the introduction of direct mayoral elections and the national corrective referendum reform will be discussed in detail. Quotes from the interviews are used in the text when these quotes provide illustrations of certain points. In both the reform cases the procedure will be as follows. First, a short introduction with background information on the reform at hand will open the subsections. After this, a history of the reform will be provided. Then, a reflection on the reform process will be offered, in which those aspects of the reform will be presented that were either very important or characteristic of the reform process. This reflection will take place with the help of the analytic framework developed in the previous Chapter. After these two sections on these specific reforms the two reforms will be compared in order to filter out those aspects that might be typically Dutch in such reform processes.

3.2 DIRECT MAYORAL ELECTIONS

3.2.1 Introduction and background to the reform process

The reform process of the attempted introduction of direct mayoral elections that will be researched in this study, started with the formation of the 1994 ‘Purple’ Cabinet, although debates about mayoral elections have been around for much longer (see for instance: Korsten, Spoormans et al. 1992). This Cabinet was significant, because it was the first Cabinet in many a decade in which Christian-democrats did not participate. This is not the moment when a specific legislative proposal for direct mayoral elections was introduced, but the coalition agreement of the Purple Cabinet mentions governmental reform and reconsidering the position of the mayor to enhance the legitimacy of the municipal executive board, the Board of Mayor and Aldermen (*College van Burgemeester en Wethouders*) (*Kamerstuk 23715, Nr. II*). However, there were several important developments that took place before this Cabinet set the reform process in motion. In this introduction, several of these developments will be described, as they are important for a full understanding of the process – if only because sometimes people have multiple roles in the reform process throughout the years. Before these issues are discussed, the position of the mayor in the Dutch political system will be explained in more detail.

The mayor is often a well known and respected figure in municipal politics.⁹ Although there are differences, in general mayors are quite influential in municipal politics (see Table 3.2 for some additional information on the figure of the mayor and his formal powers). The introduction of direct mayoral elections in the Netherlands would thus bear directly on the structure of local government and influence the way in which politics take place. Local government in the Netherlands is in some respects more important than the provincial level. This has to do with the number of tasks and money involved in the execution thereof. Local authorities have a very limited capacity to generate their own tax revenues in the Netherlands, especially compared to municipalities in other countries (Loughlin and Hendriks 2011). At the same time, they are the executives of many (and ever more) national policies and although the money they get to perform these tasks is earmarked, there is a considerable level of policy freedom or discretionary room, even though sometimes there is debate about the level of this freedom (Boogers 2010; Hendriks and Schaap 2011: 101).¹⁰ Electoral turnout in municipal elections is not as high as in national elections. National election turnout since 1970 fluctuates between 70 and 90%, whilst local turnout aggregated at a national level fluctuates between 50 and 75%. In recent years voter turnout in municipal elections in the Netherlands has dropped considerably (Denters and Klok 2005; Hendriks and Schaap 2011: 108), with the 2010 election showing the lowest average turnout ever at 54.1%.

The local council is elected in a similar fashion to the *Tweede Kamer*, with a fully proportional election. In the case of municipalities this election takes place every four years. The council is formally the most important governing body of the municipalities. In reality the Board of Mayor and Aldermen is quite dominant. Especially the aldermen were considered highly influential for a long time because they were also part of the municipal council. This was called monistic local government. Aldermen were usually the most influential politicians in their respective factions in this situation. In 2002, this resulted in a Local Government Act that introduced dualism in local government. This meant, amongst other things, that aldermen could no longer be part of the municipal council. The introduction of the Local Government Act also plays a role in the attempted introduction of the directly elected mayor, as shall be seen later in this Chapter. Contrary to the national level, the only reason to deviate from the four year period between elections is a municipal amalgamation. When a crisis occurs in the municipal executive board or in the coalition, no elections take place and a new coalition has to be formed

9 Searches on the internet and in databases do not provide any such data, also when e-mailed the Association of Dutch Mayors (*Nederlands Genootschap van Burgemeesters* or NGB) if they knew of the existence of such data the answer was that they had also tried to find such data but could not find it. At the same time they had also read in the media on several occasions about the popularity of mayors. Finally there is often data on the popularity of individual mayors. So the overall consensus amongst politicians is that mayors are quite popular in the Netherlands, and when one states this, no raised eyebrows or difficult questions will follow.

10 A classic way cut spending by national government has been to devolve the execution of a policy towards municipalities, but cutting the budget with which it is to be done.

The Dutch mayor at the start of the reform process

The Dutch mayor has historically been a figure of considerable authority, but the position of the mayor is not static. The mayoral function was originally an honorary function executed by persons with aristocratic backgrounds, but it developed into something more than that. First, there was a period after the Second World War in which civil servants became mayors, thus mirroring the growing expertise that was needed by mayors to deal with the expanding welfare state. Later still, from the 1970s onwards, the mayor was recruited from aldermen more often, mirroring the increasing sense that the mayoral function was a political function considering the powers the mayor had. The mayor will often be one of the figures of municipal politics that sticks around quite some time, although this seems to be changing too. When a mayor stays in function for two terms, one is mayor of a municipality for 12 years, and thus in a position to get well acquainted with many people (professional and otherwise) in a municipality, which leads to more influence on local politics. All in all, the mayoral function has changed quite a bit throughout the years, although no fundamental reforms have taken place (Derksen and Schaap 2007; Cachet, Karsten et al. 2009).

<i>Appointment</i>	By the Crown (which means government) after applications to and (pre)selection by the Commissioner of the Queen and advice by the municipal council
<i>Term</i>	Six years (can be reappointed indefinitely until 65 th birthday)
<i>Formal role</i>	Chairman of the council (no vote in the council); chairman of the Board of Mayor and Aldermen (with vote)
<i>Individual competences</i>	<p>A) Maintain the public order and security in the municipality, and depending on exactly which mayor (of the biggest municipality of a police region or not).¹¹</p> <p>A2) Wield authority over the police force as regards the public order and relief</p> <p>A3) Administer a police region and police force</p> <p>A4) Supreme command in case of a catastrophe, large accident, or fire</p> <p>A5) Administer the fire department</p> <p>B) Role in appointing royal decorations</p> <p>C) Depending on the municipality role in specific policy areas.</p>

Table 3.2 Characteristics of Dutch mayors

whilst the different parties in the municipal council still have the same number of seats in the council as before the crisis.

The mayor is not elected, not by the citizens of a municipality or the members of the municipal council. Instead, the mayor is appointed by the Crown (this means that the Dutch government appoints mayors, not literally the King or Queen – although his or her signature is required as he or she is formally the head of government). In effect, this means that it is a Cabinet decision whether a mayor is appointed somewhere. However, normally Cabinet does not involve itself actively with the appointment of mayors. Applications are sent to the Commissioner of the King, who, in turn, sends a list of the suitable candidates to the municipality in question. The municipality then has the possibility of selecting two (in certain special cases even one) preferred candidate(s) back to the Commissioner. The Commissioner then selects the most suitable candidate, which in practice means to follow the advice of the municipality, and proposes the appointment of that person to Cabinet. Sometimes, such as when a big city is involved, Cabinet will involve itself more actively with the selection procedure.

11 Especially in the case of safety policy mayors have considerable powers available at their disposal to instruct specific interventions.

The mayor has historically been a highly regarded figure in municipal politics. At first he was often a member of the upper classes and did not receive a large salary (this was before the Second World War). Thus, it was an honorary job. After the Second World War, the position of the mayor changed, it became a job that one could pursue like other jobs as salary became sufficient to live on. As a result, the job of the mayor became a more professional and more technocratic job (Cachet, Karsten et al. 2009). However, despite these developments, the mayor continued to be a prestigious figure. One of the reasons for this could be that the mayor was a person 'dropped' from above. As an appointee from the national government, the mayor was not tainted by local political activities but a relatively neutral external figure with a strong formal position.

In the process of the introduction of the directly elected mayor, the Minister of the Interior at the time – Johan Remkes – sent an exploratory memo to the *Tweede Kamer* in which three phases of the development of the mayoral function were distinguished (Remkes 2003). In the first period, before the Second World War, the mayor was very dominant in local politics. After the Second World War, this position changed towards a mayor-as-manager position. After 1970, the mayor became something like a team leader. The memo concluded, that the position of the mayor has become less strong. This weaker position had tempted PvdA-mayor Bram Peper of Rotterdam (later to become Minister of the Interior) in 1998 to state, that mayors had become 'governmental fringe-group youths' (*bestuurlijke randgroepjongeren*). Contrary to the effective power of the mayor, the status of the mayor has increased, and that this rise in status was one of the causes of the debate on the way a mayor was appointed or elected. In recent years, the opposite claim has been made about the strength of the mayor, namely that mayors are getting too much power, especially in the realm of Dutch security policies (Cachet, Karsten et al. 2009). These two claims seem to aim at different things, namely the position of the mayor within the executive board and the executive power of the mayor in terms of the scope of powers devolved to the mayor as an institute on his own. It is noteworthy nonetheless, that a development has taken place from a claim that the mayor is too weak to a claim that he is too strong.

The starting point for the reform process that is looked at in this study is 1994, however, in the paragraph below we will start a bit earlier, in the 1970s, the last phase distinguished in the exploratory memo the Minister of the Interior sent to the *Tweede Kamer*. The reasons for this choice lie in the facts that the stages for the reform process were set and some people in influential positions also played a role later in the reform process.

3.2.2 The reform process: introducing direct mayoral elections in the Netherlands

Setting the stage

In 1972 a small reform introduced by Minister of the Interior Geertsema of the VVD, allowed municipal councils to develop a profile against which potential mayors were to be judged.

This reform followed upon an incident in 1967 in which Minister of the Interior Beernink of the CHU (*Christelijk-Historische Unie*, one of the CDA precursors) let the municipal council of Amsterdam formulate their desires regarding the qualities the new mayor to be appointed should have, without naming specific candidates (Derksen and Schaap 2007). After the reform introduced by Geertsema, instead of a decision being taken simply by the Commissioner of the King, the Commissioner had to take the views of the council into account. So if a Commissioner was conservative but a municipal council very progressive, they could at least steer the Commissioner away from an all too conservative appointee with the help of this profile. But the Commissioner kept influence on the process.

During the 1970s, a debate started to develop about a thorough revision and update of the Dutch Constitution. With the aim of a revision in mind, the State Commission (*Staatscommissie*) Cals-Donner was formed, and presented its advice in 1971. Although the constitutional reform that was finalized in 1983 did not provide for any real changes in the democratic system as such, this fact did lead to a debate on the desirability of such reforms.

Because no democratic reforms managed to get into the reform package of the Constitution, in 1982 another commission was formed, the State Commission Biesheuvel (appointed by a Cabinet in which Van Thijn of the PvdA was Minister of the Interior). The State Commission Biesheuvel was to investigate the possibilities of enhancing the influence of citizens on policy development. In 1984 the Commission presented its results. Although one of the topics to be investigated was the position of the mayor, no advice on reform of the position of the mayor was given. It was impossible for the Commission to reconcile the different opinions that existed on the matter. The Commission did advise to create a referendum possibility at the national level, as will be shown in the subsection on the introduction of the corrective referendum. However, during this period Minister Van Thijn had formalized the position of a municipal committee that could make a pre-selection of the candidates the Commissioner of the King deemed eligible for the job. In 1978 Minister Wiegel of the VVD had attempted to prevent this advisory practice from formalizing. This committee became known as the *vertrouwenscommissie*, and the influence of the advices of these committees was considerable (Derksen and Schaap 2007). In many cases, the advice of the committee was followed even though it was not formally binding.

After another several years, in 1989, the Special Commission on Issues Regarding State Reform (*Bijzondere commissie vraagpunten staatkundige, bestuurlijke, en staatsrechtelijke vernieuwing*), also known as the Commission Deetman, was installed. This was a result of a motion by Hans van Mierlo of D66, supported by the five biggest parties in the *Tweede Kamer*, demanding an investigation into the functioning of national politics, administration and the Constitution. This Commission presented its results in 1990, which led to the creation of several special Commissions on topics relating to Dutch democracy (Pot, Elzinga et al. 2006). There were: a Commission on advisory boards (the Commission De Jong), a Commission on the relation between the voters and elected on the national level (Commission De Koning), a Commission on ministerial accountability (Commission Scheltema), a Commission on decentralization (Commission Frans-

sen), a Commission on the functioning and organization of the public service (Commission Wiegel), and a Commission on the election or appointment of the mayor, the Commission Van Thijn. The Commission Van Thijn reported its findings in 1993 (Van Deth 1993).

The Commission Van Thijn distinguished three basic models that were discussed time and again in Dutch politics. These models were:

1. Appointment by the Crown
2. Indirect elections by Municipal Councils
3. Direct election by Citizens

Of these models, the first model was in place and formally protected by the Constitution, although the influence of municipal councils on the process had grown through the years. The Commission advised to move towards the 2nd possibility, however there were two dissenting votes. Johan Remkes of the VVD (the Minister mentioned above, at that time a politician in the province of Groningen) wanted to keep the appointment by the crown as it was, and Haijo Apotheker, a D66 politician, who was in favor of direct election by citizens, dissented. The Commission Van Thijn did effectively produce an advice to reform the Constitution.

Article 131 of the Constitution states that 'The Commissioner of the King and the mayor are appointed by the Crown'. The article is then developed further in the provincial and municipal law. This development procedure is important and has implications. There is no constitutional court in the Netherlands and although there is some legal testing by the *Raad van State* (Council of State) – a body critiqued by the European courts of law because it plays a role in policy formation and jurisdiction (Bovens, 't Hart et al. 2007; Breeman, Van Noort et al. 2008) – in the development of the law, Parliament is quite free in its interpretation of the Constitution. The three models distinguished above can thus be interpreted in quite different ways, and, notably, in such ways that one can officially still have a Crown appointment but in reality come very close to either a municipal election or direct elections (see also: Schaap, Daemen et al. 2009).¹² This is quite in line with Toonen's (1987) thesis on the rigidity of structure combined with flexibility of daily practice.

Starting the reform process

In 1994 the national election results and the coalition formation thereafter were quite shocking for some involved. The CDA or its predecessors (such as the above mentioned CHU) had been part of a ruling coalition ever since the First World War. Now they lost so dramatically that they were not a part of the subsequent coalition formed.¹³ A 'Purple' coalition that was previously unthinkable, due to the opposing views of social-democrats and conservative-liberals, was

12 In effect, the small changes mentioned in the paragraphs thus far were steps towards municipal elections: a municipal committee guiding the selection of the appropriate candidates etc. Later, with the temporary mayoral referendums steps towards direct elections are taken.

13 Of course, losing does not mean one cannot be part of a coalition government, but in this case it turned out that way. The CDA lost 20 seats dropping from 54 to 34 seats in parliament.

formed between the PvdA (which had 37 seats in Parliament), the VVD (31 seats) and D66 (24 seats).

The distinguishing themes of this coalition were liberal issues, such as opening hours of shops, gay marriage, and euthanasia. However, at the same time, an attempt to deconstitutionalize the appointment of the mayor was set in motion. Based on the Van Thijn advice, in 1997, shortly before new elections were to take place, the *Tweede Kamer* voted in favor of deconstitutionalizing the appointment of the mayor by the Crown. This was initially done in favor of the introduction of council appointed mayors (Derksen and Schaap 2007). This vote was relatively unproblematic.

After the second Purple coalition started to work, in 1998, the deconstitutionalization process was temporarily halted. The result of the election in 1998 was that the PvdA and VVD won many seats, ending up with 45 and 38 seats, but D66 winning only 14. In the coalition agreement D66 had demanded the introduction of direct mayoral elections but had not managed to get this concession (see: *Kamerstuk 26024, Nr 10*), instead Minister of the Interior Bram Peper (PvdA) installed the State Commission Elzinga (Commission on dualism and local democracy) in 1999. This Commission was installed to review local democracy in its entirety, aiming for a more appealing local democracy. One of the issues the Commission was to take into account, was the position of the mayor. Because it was considered prudent to wait for the advice of the Commission, the deconstitutionalization process was stopped. This meant that – if the process was to be picked up again later – another normal majority would first be required in the *Tweede Kamer*.

The Commission Elzinga presented its report on dualization in 2000. The Commission provided advice on how to dualize the system of local government. Dualization refers to ending the situation in which the executive aldermen were also members of the legislative municipal council, thus creating a situation more in line with classical theories of separation of powers. The existing arrangement, in place from 1970 onward (the period in which the mayor became a team-leader), was called monism and gave the aldermen a very dominant position in local government. They could vote on issues in the municipal council, operate as executives, but also be part of faction-meetings. Separating the council from the executive council would strengthen the position of councils and thus make local politics livelier. There were also other reforms such as the introduction of council registrars (*Staatscommissie dualisme en lokale democratie* 2000). The advice of the Commission led to the introduction of dualization in the Netherlands, but not all aspects of dualization were introduced (Schaap and Ringeling 2007).

In the report of the Commission Elzinga, special attention was given to the position of the mayor. The mayoral position was seen as the finishing touch of dualization (Engels 2003). It was thus unfortunate that specifically on this point the Commission did not manage to arrive at a unanimous position: the Commission did advise in favor of direct mayoral elections, but not unanimously. The same goes for the constitutional form the position of the mayor should have. The Commission Elzinga advised that the appointment by the Crown was to be

deconstitutionalized, but at the same time, there should be a provision in the Constitution that stated that the way the mayor was appointed, whether elected or actually appointed, should be arranged in the Municipal Law.¹⁴

Based on the advice by the Commission Elzinga, Prime Minister Wim Kok and Minister of the Interior Klaas de Vries (PvdA), who succeeded Bram Peper, sent a letter the *Eerste Kamer*, where the proposal was still awaiting its first reading, on the 18th of December 2000 to withdraw the earlier proposal.¹⁵ After this a new proposal for the deconstitutionalization of the appointment by the Crown was sent to the *Tweede Kamer*.

At the time, the new deconstitutionalization proposal reached the *Tweede Kamer* some changes to the position of the mayor had already taken place. The power of the municipal advisory committee was enhanced so that the advisory committee could select the two candidates it deemed most fit for the job to the Commissioner of the King (motion-De Cloe). After this, as a preliminary measure, the possibility of advisory mayoral referendums was created in 2001. This meant that the two candidates selected by the advisory committee could be put up to a vote by the people. The referendum was used with reasonable success in the municipalities of Best, Vlaarding, Boxmeer, Leyden, Zoetermeer, and Delfzijl. Finally, the possibility of a 'recommendation to discharge' was created that gave municipal councils the power to recommend the Minister of the Interior to discharge a local mayor.

The reform process – continuing after an electoral earthquake

The main episode of the reform process started with the introduction of the new deconstitutionalization proposal. This proposal managed to get a majority in the *Tweede Kamer* (19th of June 2001) and the *Eerste Kamer* (22nd January 2002), based on the coalition agreement between the three Purple parties in which direct elections were specifically mentioned, although the PvdA and the VVD were actually not in favor of direct elections. In the *Tweede Kamer* the SP, GroenLinks, PvdA, D66, and VVD voted in favor of the reform, in the *Eerste Kamer*, there was no actual vote but the CDA and the small parties CU and SGP were allowed '*aantekening*', which meant that they would have voted against the proposal if it would have come to a vote.

14 Those dissenting were in favor of constitutionally anchoring the exact way in which the mayor was appointed. So the Constitution would, for instance, have to state direct elections or council elections.

15 The reason for the fact that the proposal was still awaiting its first reading in the *Eerste Kamer*, was that it would not only be article 131 of the Constitution would need changing, but also article 125 clause 3, that arranged for the mayor to be chair of the municipal council. There was a debate on this matter in the *Tweede Kamer* in which the VVD urged others to wait with the process.

Box 3.1 The proposal for the deconstitutionalization of the mayoral appointment

Main legislative proposal for deconstitutionalization: changing article 131 of the constitution.

Old article 131: De commissaris van de Koning en de burgemeester worden bij koninklijk besluit benoemd. (The Commissioner of the King and the mayor are appointed by Royal Decree, translation CG)

New article 131: De aanstelling van de commissaris van de Koning en de burgemeester vindt plaats volgens regels bij de wet te stellen. (The appointment of the Commissioner of the King and the mayor takes place in accordance with legislation on the matter, translation CG)

In April 2002, the second Purple coalition resigned because of a report on the role of the Dutch military in Srebrenica in the 1990s. This was only a month before the actual elections were to take place, so no 'early' elections were planned. The elections in 2002 were dominated by the shock of the murder of Pim Fortuyn, who campaigned for his *Lijst Pim Fortuyn* (List Pim Fortuyn) party. In the run-up to the election, Fortuyn had heavily criticized the Purple coalition (among other things he published a book called 'the ruins of eight years Purple') on several issues, of which immigration policies were a notable one. He also joined the new party *Leefbaar Rotterdam* (Liveable Rotterdam) and won such a share of the votes that he could form a coalition without the PvdA, which had dominated Rotterdam politics for decades (Tops 2007; Van Ostaaijen 2008; 2010). The way Fortuyn campaigned and the fact that he won, led to fierce reactions from other political parties (Fortuyn was allegedly a racist, an unacceptable human being, and so forth). Especially left-leaning parties had fierce critique on Fortuyn. Due to the fact that Fortuyn managed to convince many people that the Purple coalition's policies were a mess and perhaps also the wave of sympathy after his murder (he was on the ballot despite his murder, as the election took place only 7 days after his murder), as well as antipathy against those who 'demonized' him, the LPF won 26 seats without Fortuyn's political leadership and the parties that were part of the Purple coalition lost many seats (see Table 3.1).

A new cabinet was formed, Balkenende-I, in which the LPF participated with the CDA (43 seats) and the VVD (24 seats). However, because of the internal bickering in the leaderless LPF this Cabinet quickly failed. The Cabinet started in May 2002 but in October 2002 new elections were necessary because of a Cabinet crisis. In the meantime, the VVD had started an internal process to reconsider their position (against the directly elected mayor) by means of an internal commission (VVD-Commissie positie burgemeester en verandering lokaal bestuur 2002). Importantly, the Dutch constitutional amendment process requires new elections after the first reading and treatment of the issue after these elections. Because of this episode with cabinet Balkenende-I, the constitutional amendment was not debated in the *Tweede Kamer*.

After new elections, the LPF was reduced to 8 seats, and because of the mess they made were forced into the opposition. Despite the gains of the CDA and VVD (44 and 28 seats) they still needed a third party in order to create a big enough coalition. This party was D66, which felt somewhat uneasy joining this coalition, but joined with the prospect of being able to reel in democratic reforms that were known as their 'crown jewels'. Without any real problems, the *Tweede Kamer* voted in support of the deconstitutionalization on the 9th of November 2004. A 2/3rds majority was needed, and not only the coalition parties, but also the SP, GroenLinks, Group Lazrak, Group Wilders, the LPF, and the PvdA¹⁶ voted in favor of deconstitutionalization.

Of course, this does not mean that there was no debate on the matter. Before the vote could take place, the VVD and the CDA had to undertake some action because of their respective party-positions on the matter. Both parties were initially against deconstitutionalization, although both the VVD and CDA election program for the 2002 and 2003 elections do not state a position on mayoral elections (CDA verkiezingsprogramma 2002; VVD verkiezingsprogramma 2002-2006 2002). Based on the experience of the Purple Cabinets, a VVD party commission was created, chaired by the mayor of Rotterdam, Ivo Opstelten, and this commission supported the introduction of direct mayoral elections in September 2002 (VVD-Commissie positie burgemeester en verandering lokaal bestuur 2002).¹⁷

"The worst result possible would be the council appointed mayor. That would take away all the advantages of the appointment by the Crown, such as the fact that the mayor can now be a relative outsider, without a real gain" *VVD Respondent*.

The same process took place in the CDA a short while later (CDA commissie inzake de gekozen burgemeester 2003). The commission was formed after the coalition agreement with D66 was a fact and the CDA needed a position on the matter. What type of direct mayoral elections would they favor? This commission was led by Wim Deetman, the mayor of The Hague (this is the same Deetman as the one from the State Commission in 1989). The CDA party commission managed to formulate an advice in favor of direct mayoral elections in October 2003. With the VVD and CDA 'on board' for the introduction of direct mayoral elections the deconstitutionalization, that was already set in motion, would now lead to the introduction of legislation to introduce direct mayoral elections.

However, whilst the deconstitutionalization was still in motion, the legislation on the dualization of municipal government had been implemented in 2002. Because of this dualization

16 The PvdA had some votes going the other way. Klaas de Vries, Minister of the Interior during the first reading of the proposal in the *Eerste Kamer*, voted against deconstitutionalising, as did Van Heteren, Van Dijken, and Noorman den Uyl.

17 Of course, the party did not switch completely, there were many party members that still had problems with the composition of the commission, claiming it to be a commission in favor of direct elections from the start.

there were many new interest groups. These groups had been subgroups of the already existing *Vereniging Nederlandse Gemeenten* (Association of Netherlands Municipalities, the VNG) or did not exist before but because of the dualization developed into autonomous groups. These newly created groups such as the association of aldermen and the association of registrars grabbed on to this issue because it would have important effects on the functions of the people they represented. Furthermore, the introduction of direct mayoral elections was a media-sensitive issue that allowed the groups to immediately work on their public profile. These groups opposed the reform and mobilized some opposition force (Vereniging van Griffiers 2004). So did many individual mayors and several municipalities. These groups and persons also formulated their discontent within political parties. The opposing mayors were often mayors of smaller municipalities. They made use of their personal political networks (which generally tended to be quite large) in order to make their opposition known.

“The real pain was felt in the surroundings. The NGB [National Association of Dutch Mayors, CG] was very critical of the proposal. Especially because of the way that the *Hoofdlijnen-notitie* [see paragraph below, CG] was dealt with. It did not help that no definite decisions were made, for instance regarding the different ways of introducing direct mayoral elections. [...] This caused there to be uncertainty for too long. It would have been much easier to negotiate for the minister if the NGB had committed itself to a proposal” *Civil Servant*.

The Minister of Administrative Renewal and Kingdom Affairs (*Minister voor bestuurlijke vernieuwing en koninkrijksrelaties*) in Balkenende-2 was Thom de Graaf of D66. He wanted to have direct mayoral elections going by 2006. In order to get this done, the actual ‘normal’ legislative procedure would also have to be started in order for this to be realized. Waiting for the second reading in the *Eerste Kamer* would mean that it would be impossible to get the necessary laws passed before 2006. This, in turn, would mean that the first direct mayoral elections could only be held in 2010 (because of the four year period between municipal elections).

“The *Eerste Kamer* was blocking the progress of the deconstitutionalization. At the same time the *Tweede Kamer* wanted to see a legislative proposal for the introduction of direct mayoral elections. Afterwards I was blamed for letting it [the constitutional process and legislative process, CG] get mixed up. I responded by letting them know this was not determined by me.” *D66 Respondent*.

Minister De Graaf was in a difficult position. His assessment of the situation was that the directly elected mayor had to be fixed in this Cabinet period, or it would be cancelled again. Furthermore, he was under pressure from within the party to get results. The ‘crown jewels’ were a direct reason for D66 to join the coalition so they were important to reel in. However, at the time

“D66 did not really have a detailed proposal on the directly elected mayor” *VVD Respondent*.

So work also had to be done on the exact contents of the proposal of direct mayoral elections, whilst the deconstitutionalization was not yet finalized. There was knowledge available on direct mayoral elections and different legislative aspects involved based on commissioned research. Furthermore, the *Eerste Kamer* demanded to have an idea of the effects their vote on the deconstitutionalization would have. They knew that the coalition in place was planning to propose legislation to introduce direct mayoral elections. This led to a situation in which the second reading in the *Eerste Kamer* took place whilst Minister De Graaf had already sent a ‘*Hoofdlijnennotitie*’ (a memo with the specifics of the direct mayoral elections such as planned) to the *Tweede Kamer* in September 2003. So both in the *Tweede* and the *Eerste Kamer* and in other places there was debate on the content of the normal law that was to follow on the deconstitutionalization, although the deconstitutionalization had not yet taken place at that point. In fact, the *Eerste Kamer* made deconstitutionalization dependent on the content of the

Introduction of direct mayoral elections as planned in the ‘<i>hoofdlijnennotitie</i>’	
<i>Election</i>	Direct elections by citizens in municipalities.
<i>Term</i>	Four years (can be reelected indefinitely until 65 th birthday)
<i>Formal role</i>	Chairman of the Board of Mayor and Aldermen with vote and additional individual authorities (see below)
<i>Individual competences</i>	<p>A) Powers in the formation process of a Board of Mayor and Aldermen, including: the members of this board, the portfolios, carrying responsibility for the unity of the politics in the municipalities, and carrying responsibility over the civil service.</p> <p>B) Maintain the public order and security in the municipality, and depending on exactly which mayor (of the biggest municipality of a police region or not):</p> <p>B2) Wield authority over the police force as regards the public order and relief</p> <p>B3) Administer a police region and police force</p> <p>B4) Supreme command in case of a catastrophe, large accident, or fire</p> <p>B5) Administer the fire department</p> <p>C) Role in appointing royal decorations</p> <p>D) Depending on the municipality role in specific policy areas.</p>
<i>Introduction process</i>	‘Big bang’ introduction to coincide with the municipal elections of march 2006.

Table 3.3 The proposed direct mayoral elections of the *hoofdlijnennotitie* of 2003 (De Graaf 2003).

proposal under scrutiny in the *Tweede Kamer* (Elzinga 2003; Raad voor het openbaar bestuur 2003). The focus of Dutch Parliament on these specificities compared to the more general democratic issue is noteworthy (Derksen and Schaap 2007). The position of the mayor as it was and the position of the mayor in the proposal by De Graaf are presented in Table 3.2 and 3.3.

That the *hoofdlijnennotitie* was taken into account in the *Eerste Kamer* also had to do with the fact that the second reading of the constitutional amendment in the *Eerste Kamer* did not take place right away. First, a debate started on the constitutionality of proceeding with the proposal. After all, the proposal was not discussed within the Balkenende-1 period because of the crisis that quickly developed and brought down that Cabinet, but only in the Balkenende-2 period. Especially PvdA senator Erik Jurgens took a tough stance on this matter, wishing to have the matter resolved before it could come to a vote. Jurgens had support, so the matter had to be resolved first, which included gaining advice of the Council of State (*Raad van State*) (De Graaf 2009). The Council of State advised the deconstitutionalization process to go on, provided that strong arguments were put forward for the introduction to go on. Cabinet provided these arguments by questioning whether article 131 of the Constitution could be seen as a fundamental constitutional provision, but also arguing that the unanimous advice of the Commission Van Thijn to at least deconstitutionalize the procedure was such an argument (Kamerstuk 2620, nr 177a). It had taken extra time in order to get to this point, so the legislative proposal for direct mayoral elections and the position the mayor would get was further developed at the time. Added to this was the fact that the second reading now took place in March 2005, which was considerably closer to the planned introduction in 2006.

On the 9th of November 2004 the *Tweede Kamer* voted in favor of the deconstitutionalization proposal with the required 2/3rds majority. The coalition partners had no choice but to vote in favor of the amendment if they wanted to honor the coalition agreement and because of the Opstelten and Deetman commissions in the VVD and CDA, the line of the party leaderships at the time was to be in favor of this reform – although, as it goes with parliamentary democracies, of course not all parliamentarians were actually in favor, just as not all those parliamentarians opposing the proposal voted against it. The question whether or not the PvdA would support the coalition to get the required majority, was the most important question. With 42 seats in the *Tweede Kamer*, the PvdA held the make or break position for the reform. Importantly, the PvdA organized a referendum (a first) among its members to let their preference be known. This referendum was agreed upon on a party congress, because a party commission on the topic matter was unable to arrive at a unanimous decision. The commission was chaired by Rudy Andeweg (who did not vote) and produced an advice in favor of direct mayoral elections based on three votes in favor of this way of electing mayors (by Lodewijk Asscher, Niesco Dubbelboer, and Mariëtte Hamer) and two votes in favor of elections by the council (by Jetta Klijnsma and Klaas de Vries) (Partij van de Arbeid. Projectgroep Democratie en Bestuurlijke vernieuwing 2004; Koole 2010). On the 13th of October, Ruud Koole, presented the results

of the internal referendum. About 30% of the members of the PvdA had participated in the referendum, and of those about 2/3rds were in favor of an indirect election by the municipal councils, in line with Van Thijn (Koole 2010). The result of this referendum was not binding for parliamentarians, but should be seen as a consequential advice. Technically, this meant that they were in favor of deconstitutionalizing, but in practice the members of Parliament knew that a proposal on direct elections was underway. Within the *Tweede Kamer* faction there were preferences going both ways, but Wouter Bos, the parliamentary leader of the PvdA, had to pressure his faction into supporting the reform by threatening to quit. The vast majority of PvdA faction members voted in favor of the deconstitutionalization in the second reading in the *Tweede Kamer*, thus providing the coalition with a two-thirds majority.

Right after this result, the leader of the PvdA *Eerste Kamer* Han Noten faction stated that they had no intention of supporting deconstitutionalization unless Minister De Graaf made concessions with regard to the powers the mayor would have (especially regarding the police force) and the moment the introduction would take place (*Kamerstuk 28509, Nr 21*).

“It might be the case that in the *Eerste Kamer*, more so than in the *Tweede Kamer*, people felt that the ‘House of Thorbecke’ should be protected, that it is the best alternative available [...] that does not mean that proposals for improvement or change are not seriously considered” *PvdA Respondent*.

The PvdA was not in favor of a rapid 2006 introduction. In the debate on the 22nd of March, these arguments were restated.

“The PvdA was also in favor of the deconstitutionalization, but the thought was that if the *Eerste Kamer* was really taken seriously, the normal legislation would not follow directly” *PvdA Respondent*.

The discussion developed in such a way that Minister De Graaf made some concessions to the PvdA, but not on all points – most notably he wanted a fast introduction and an introduction that would be the same for all municipalities at the same time, and not to start with some (big) municipalities first and perhaps follow with the others later. In comparison to other countries, where such variations were allowed, this is a position unique to the Netherlands (Derksen and Schaap 2007).

“Thom de Graaf was not sensitive to the way the debate was developing itself. Ruud Koole visited the faction. Wouter Bos also wanted to visit, but we told him ‘we are not suddenly going to vote in favor of the reform if you show up, so it could damage your position’ so we talked about the matter via a telephone connection” *PvdA Respondent*.

When the debate ended the PvdA faction voted against the deconstitutionalization, as did the SP and GroenLinks. All these parties were technically in favor of deconstitutionalization.

“There was a broad consensus about the proposal in the *Eerste Kamer* and in the corridors of Parliament, namely that the proposal was not sound. But parties were bound by the coalition agreement, technically this was not the case, but emotionally it is. However, this consensus did make it easier to uphold our position” *SP Respondent*.

The LPF and the Independent Senate Faction (both 1 seat) voted in favor, and the CU and SGP against the proposal. This led to a 42 in favor, 31 against vote. A large majority, but five votes short of the required two-thirds majority, so the deconstitutionalization was cancelled.

The reform process aftermath

The rejection of the deconstitutionalization led to a Cabinet crisis, in which Minister De Graaf quit his position a day after the vote in the *Eerste Kamer*.

“Thom de Graaf was not supported by the Cabinet. Balkenende could have easily stopped by to talk with the faction leaders without being noticed by the media, but he didn’t. Neither did the Minister of Justice [Piet Hein Donner, CG]. He was out on his own. Kicking D66 out was fine for the CDA as they are conservatives. The CDA didn’t mind it at all that we pulled the chestnuts out of the fire for them” *PvdA Respondent*.

“De Graaf did not debate well. But he was not supported by Balkenende either” *VVD Respondent*.

Another three days later a new coalition agreement was agreed upon. In this agreement D66 received compensation for the fact that they did not get the reform as agreed upon in the previous agreement. Another element of the new coalition agreement was the renewed attempt for the introduction of direct mayoral elections in 2010.

This renewed deconstitutionalization proposal accorded in the *Tweede Kamer* and was awaiting debate in the *Eerste Kamer* when the Balkenende-4 Cabinet started working. This Cabinet was based on a coalition between CDA, PvdA and CU, and thus not naturally in favor of direct mayoral elections. Instead, they decided in November 2008 to change the Municipal Law in such a way as to remove all mentioning of mayoral referendums and keep the appointment arrangement in place as it was. Since 2001, the appointment procedure was organized in such a way that municipal councils should make the first preference but not the second preference publicly known. Whilst this is not a binding advice as such, any Cabinet would have a hard time explaining why the preference of the council would not be followed, especially

considering the pre-selection by the Commissioner of the King and the continuing possibilities for lobbying in the pre-selection process.

“Of course, as a mayoral lobbyist your main objective is to get as many mayoral positions as possible. But at the same time, you also make agreements with the other parties in order to come to a fair distribution” *VVD Respondent*.

“In the time of Dijkstal [as Minister of the Interior, CG] about 25% of the appointees was someone other than the person asked for by the Council. The reason was that the Commissioner of the King was still a mediating factor. That intervening person had to be removed. Above all, the advice had to become public. By making the advice public the possibility to opt for another person diminished considerably. That’s what I call pragmatic working” *PvdA Respondent*.

In special instances a single candidate could be nominated, but the rule is still that two candidates are sent to the Commissioner of the King of which the preferred candidate is made publicly known. It is not specified what counts as such a special instance, but the occasions thereof are to be formulated by a provincial authority. This is the case since 2004, before this the municipal council could formulate these cases. Before this the deconstitutionalization proposal was repealed on the 8th of May 2007.

So the (provisional¹⁸) end result of the reform trajectory is a mayor with more authority in specific areas of security policy (a process that has taken place steadily, and except for the matter of the police force, independently of the debates of direct mayoral elections), and a much stronger position for the municipal councils. The position is in fact so strong, that there is practically a municipal election of the mayor, although Commissioners of the King still play an important role in the process.

“The situation right now [in 2011, CG] looks much like the council elected mayor, although the Commissioner of the King does a pre-selection. But it is not ideal. The Crown should not be a stamping machine. Ter Horst [Minister of the Interior at the time of the interview, CG] said she wants more women and minority mayors. I still have to see her go against the appointment advice of a municipal council” *VVD Respondent*.

“There was quite some steering in the pre-selection process. Jan Terlouw did this, for instance. There were much more D66 mayors than you would expect. But if you send seven

18 There are still calls for deconstitutionalization and direct mayoral elections – for instance by mouth of Hero Brinkman of the PVV in March 2011 – but no formal procedures in that direction are in progress at the moment, however. In a more general sense, nothing can be ruled as definitely out of the picture for once and all in politics.

candidates and clearly the best candidate is the D66 mayor, you can influence the process. Of course, you cannot do this endlessly" *VVD Respondent*.

The position of the mayor has changed considerably. The competences of mayors have grown in the area of municipal security, and because of the de facto municipal appointment amongst other things there has been a rise in the number of mayors that have resigned their position (Korsten, Aardema et al. 2008; Korsten, Bijl et al. 2009; Korsten 2010). If the scale of these developments was known at the time, the debate might have developed itself in a different fashion.

"If you look at all the powers that have been given to mayors in the mean time...it is really absurd. If you look at the powers they now have one might have had to vote in favor of the constitutional amendment back then to better legitimize the position. [...] They are changing all sorts of things, but where is it leading? It creates a vacuum in the relationship with citizens; how do you explain all those powers?" *PvdA Respondent*.

Perhaps there is now more room to maneuver towards a different appointment or election method for the mayor.

"The VVD is still divided. But the VVD is no longer so divided that it can't move on this position" *VVD Respondent*.

3.2.3 The introduction of the directly elected mayor: formal procedure, political actors, and situational circumstances

In the previous subsection the historical development of the reform process has become clear. The focus has mainly been on the institutional elements of politics, specifically the interplay between different political parties and the voting ratios in relation to different elections. Another thing that should have become clear is that commissions play an important role in the reform trajectory (for an analysis on the work of commissions in the Netherlands see: Schulz, Van Twist et al. 2006; Schulz 2010).

In this subsection, attention will be given to (aspects of the) three main questions that follow from the analytical framework. These questions regard the formal procedure, the involvement of actors, and the context of the reform. As in the previous subsection, where it is deemed instructive the interviews conducted for this study will be used for illustration.

The formal reform procedure

The formal reform procedure to introduce the directly elected mayor seems quite straightforward. Introduction of directly elected mayors requires a constitutional amendment. This amendment first requires two simple majorities in subsequently the *Tweede Kamer* and the

Eerste Kamer. Then elections for the *Tweede Kamer* have to take place, after which both Houses of Parliament have to vote on the matter again, but this time a 2/3rds majority is required in both Houses of Parliament. After this reform has been accepted, new 'normal' legislation would also be required, as the existing laws deal with an appointed mayor.

In practice, this seemingly clinical sequential procedure could not be followed due to political realities that had to do with considerations by political actors. This will be discussed in more detail below. The first complication was the failure of the Balkenende-I Cabinet to discuss the matter in their short coalition period. This caused there to be two *Tweede Kamer* elections between the first and the second vote on the matter in the *Tweede Kamer*. This sparked debate and finally led to an advisory ruling by the Council of State (*Raad van State*).

The second complication was that the Senators in the *Eerste Kamer* knew that the Minister was working on normal legislation to introduce the directly elected mayor, and demanded insight into this development. So the constitutional process became mixed with the legislative process, whilst these were formally two separate procedures.

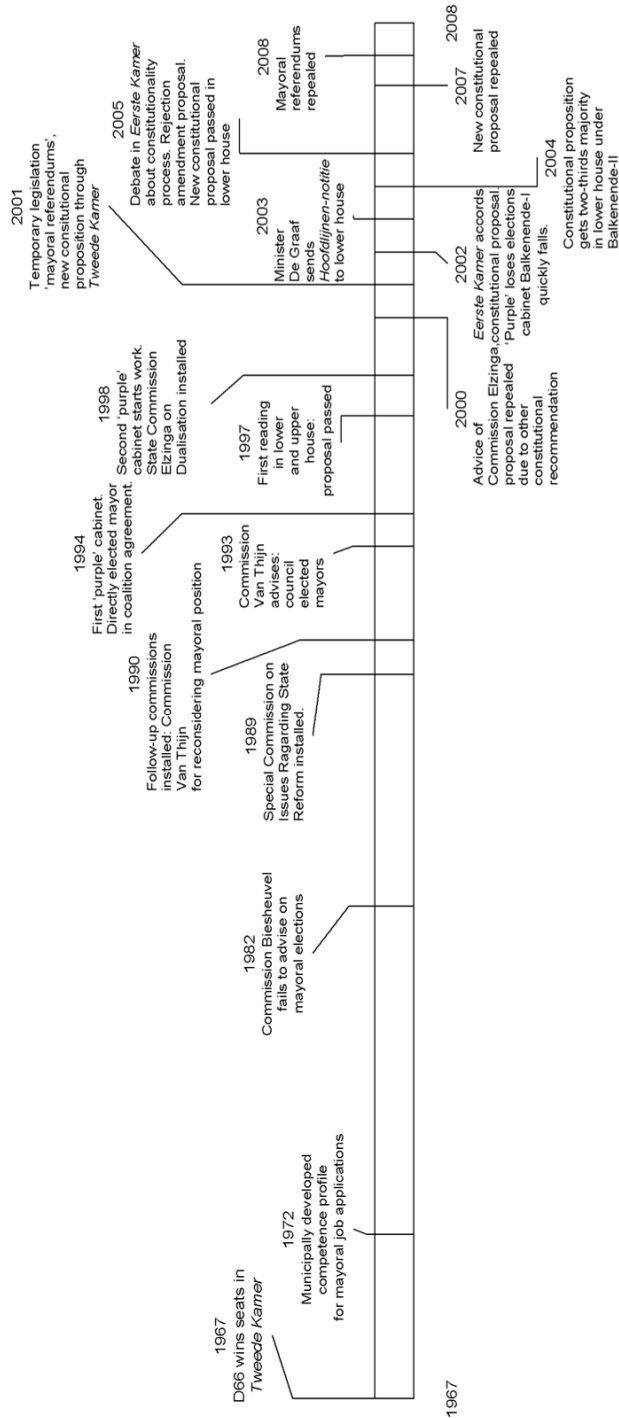
The actors in the reform process

Political parties

The first observations are about the role of political parties in the reform process. The political parties are truly the dominant actors and arenas of the reform process. The internal processes of political parties matter a great deal for the positioning of the political party. It is within the political parties that some of the fiercest debates take place, often without the debates becoming public knowledge. The case of the introduction of directly elected mayors is in that sense remarkable that there were fundamental debates about the matter in the traditional big parties of the CDA, VVD, and PvdA. This resulted in party positions in favor of direct elections by the CDA and VVD at the time of the voting rounds in the *Eerste Kamer* and *Tweede Kamer*, but a mixed position within the PvdA (the party commission on the matter in favor, but divided, and the party members against direct elections). Of course, one has to keep in mind that there were still dissenting voices in the party, and the position of the party at the time (under pressure because of a coalition agreement) did not automatically turn into a lasting party line. A party line will generally be followed by the factions in both the *Tweede* and the *Eerste Kamer*, but this does not have to be the case. Even a formal party line is continuously under scrutiny.

The most basic observation about the political parties is that they do not shy away from strategic voting. The parties do not fear voting against their own preference (in principle), if the result of that vote will be something they do not like afterwards. PvdA, SP, and GroenLinks all voted against deconstitutionalization although they were actually in favor of this (an overview of voting behavior in the crucial second reading in the *Eerste Kamer* is presented in Table 3.4). The reason was, that they knew a vote for deconstitutionalization would mean a following introduction of direct mayoral elections would, whilst they all wanted council elected mayors.

Figure 3.1 General timeline for the introduction direct mayoral elections in the Netherlands



Deconstitutionalization vote in <i>Eerste Kamer</i> (second reading)	Vote for or against deconstitutionalization	Party line on deconstitutionalization at the time of the vote	Preferred option for mayoral appointment or election at the time of the vote
<i>CDA</i> (23 seats in senate)	For	For	Direct elections
<i>PvdA</i> (19)	Against	For	Council elections
<i>VVD</i> (15)	For	For	Direct elections
<i>GroenLinks</i> (5)	Against	For	Council elections
<i>SP</i> (4)	Against	For	Council elections
<i>D66</i> (3)	For	For	Direct elections
<i>CU</i> (2)	Against	Against	Crown appointment
<i>SGP</i> (2)	Against	Against	Crown appointment
<i>LPF</i> (1)	For	For	Direct elections
<i>Onafhankelijke senaatsfractie</i>	For	(List combination, not one party line)	(List combination, not one party line)

Table 3.4: Deconstitutionalization party behavior in March 2005

A second reason was that it meant frustrating a coalition of which they were not part, which is both strategically and sometimes also emotionally pleasing for opposition parties. Drawing any real conclusion about voting behavior, especially of the PvdA *Eerste Kamer* faction is difficult for many reasons.

Shortly after the 22nd of March 2005, Van Thijn appeared on television and stated that a fear was, that once direct mayoral elections were in place there would be no repealing them. Different respondents have commented on the role of Van Thijn and stated such things as:

“I don’t know why he said that. [...] Nobody seems to care, but we really had problems with the proposal as it lied there [...] It was the first time we held such a referendum in the party, what were we to do? Were we more afraid of the voters in general or of our own party members? We chose in favor of our party members.” *PvdA Respondent*.

Important in this respect, is that the assessment of the situation by politicians led to contrary developments. Where the thought in the PvdA was that once people had a right to vote on something, you could not take it away after that (at least not without severe electoral punishment), D66 felt an urgency to fully introduce direct mayoral elections and not settle for just the deconstitutionalization.

“The party wanted results for being a part of the coalition, so we had to get these direct elections passed. If we did not get them right then, we would not get them at all.” *D66 Respondent*.

These two assessments of the situation could not be reconciled and contributed to the defeat of the deconstitutionalization proposal in the *Eerste Kamer*. Within D66, Minister De Graaf felt pressure to get the reform passed within the legislative period. The idea was that there was no room for the more pragmatic option to just get the constitutional amendment and after that see what would be introduced: council elections or direct elections.

At the same time, consider the fact that senator Jurgens emphasized the importance of the constitutional process and wanted to know if the process could go on. Jurgens himself is said to be an opponent of direct mayoral elections, but also a known legal scholar. Thus, to stop the reform based on the technical issue of the fact that the second reading did not take place when it should have would have been an 'easy' way to stop the reform and solve a legal problem all at once. One could claim constitutional purity, but still stop the reform. The opposite phenomenon also occurred. Within the VVD and CDA, the way the internal reports to determine the party position on direct mayoral elections were developed was criticized. The selection of commission members was said to be biased in favor of a certain outcome. However, once the party position was determined, they stuck with it and voted along party lines. However, that did not stop Senators (and other party officials) of the VVD and CDA from thanking Van Thijn and other PvdA Senators for their voting behavior after the second round in the *Eerste Kamer*. Sometimes they even sent bottles of wine and other gifts.

What did not help either, was the fact that the issue was seen by different parties as a D66 issue. When an issue or a point is identified too strongly with one group, that group runs the danger of being the group that can be legitimately ignored (Hirschman 1970; Zimbardo 2008). All parties are happy that you are there because they do have a dissenting voice, but they do not have to listen to you. Especially because the parties did not fear electoral repercussions of voters changing to D66.

The goals of the different parties were quite clear at the outset (see Table 3.4), but in final instance the only parties that had political room to maneuver were the PvdA, GroenLinks, and SP. These parties had decided to stick together and thus had formidable blocking powers against which the other parties could not do anything. Formally, the other parties did not have powers to get these parties on their side, and informally the issue was not a highly salient issue for the general public (see the point on the general public below).

Individual persons

An important role was played by specific individuals. There are several instances where individuals played a role. Most prominently, this was the case with De Graaf and Van Thijn. In several interviews people have hinted that Van Thijn wanted to get back at De Graaf for his role in the (fact-finding committee that researched the) IRT-affair in the early 1990s. This investigation into the investigative practices of a police unit caused Van Thijn to resign his position as Minister of the Interior in 1994, only months after he got the job. However, this story could not to be confirmed or dismissed. If it did play a role, both De Graaf and Van Thijn

would not admit it. Indeed, Van Thijn denies it altogether (Van Thijn 2007). Importantly, Van Thijn was joined by his entire faction in his vote against the deconstitutionalization proposal, which they would in all likelihood not do based on a personal grudge. Still, the fact that it was mentioned in several interviews says something about the mindset of Dutch politicians. A similar insinuation was, that the PvdA wanted to get back at D66 for joining a Balkenende Cabinet after the Purple Cabinets. It was considered treacherous behavior. However, on the base of the interviews with several PvdA members nothing like this can be confirmed.

Another group of important players consists of those persons that managed to get their factions or parties behind them in defense of a certain position, such as Opstelten, Deetman, and Bos. However, in terms of a final showdown between Bos, PvdA party leader at the time Ruud Koole, and Van Thijn, Van Thijn 'won' because he withstood the pressure from the party leadership to vote in favor of reform.

A final person in the reform process worth mentioning is Douwe Jan Elzinga. After he voted in favor of direct elections in the State Commission named after him, he became a fierce opponent of direct mayoral elections. In a weekly column in the magazine '*Binnenlands Bestuur*' ('domestic governance'), which has a wide reading among public administration professionals, he opposed the introduction of direct mayoral elections on a regular basis. There are of course numerous people that opposed the reform and those who favored them, but in terms of influence, it was of much symbolic value that the chairman of the dualization Commission opposed the reform.

Other actors

Of all the other actors involved in the research process, the two most recent State Commissions on the topic (Van Thijn and Elzinga) were the most important. These Commissions, when they vote unanimously, apparently have much influence on the views of parliamentarians. It is not without reason that GroenLinks Senator Platvoet mentioned "It is a shame that the Elzinga Commission [...] came up with such a divided and debatable advice with regard to the appointment of the mayor. Because of this, it became a powerless advice on this subject." (*Behandeling kamerstuk* 27551, 22-1-2002). The advice of a State Commission carries weight. It was the Van Thijn Commission that initially set the deconstitutionalization process in motion, and the Elzinga Commission seriously damaged the same process.

There were of course other institutes that exerted their views in the media and sent letters and petitions to the *Tweede Kamer*, such as the VNG, the Aldermen and the Registrars Associations, but these organizations were not mentioned in interviews as really influential, nor are they mentioned in the debates on the matter. However, even though they might not have had a formal position in the reform process, they did manage to communicate their arguments against the reform. Whilst the organizations did not play a role in the debates as such, they could have partially set the scene against which politicians were to operate and made this

scene more negative towards changing the status quo and allowing for direct elections. At the same time, some influential mayors (of big cities) argued in favor of direct elections.

A final group is the civil service. Civil servants are sometimes regarded as a 'fourth power' next to traditional powers such as the executive, legislative, and judicial powers (Bovens, 't Hart et al. 2007). However, in this case, no such role attribution seems to be justified. The civil servants interviewed, talked about serving their Minister and about potential miscalculations in the communication about the introduction. Generally, they stated that it was the Minister that had to decide on the political matters and that they were subservient to the decisions of the Minister. There was no mention of the civil service steering the reform process by any of the politicians interviewed. Apparently, in the case of this democratic reform, civil servants were not in a position to dominate or steer their minister (nor were they attempting anything as such). A possible explanation is that this is an area of expertise with little technocratic qualities attached to it. It is a topic on which anyone can have an opinion, regardless of the substantive knowledge they possess on the matter of democratic institutions.

The general public

Notably absent from the debates in the *Tweede Kamer* and *Eerste Kamer* was the general public. Of course, there are always citizens that write critical or supportive opinion articles in newspapers or on blogs, but there was no big citizen movement in support of or against the reform. As one CDA politician stated:

"Compared to some issue over livestock there is less attention. When you want to change a cattle farming regulation there will be continuous protests and lobby groups at the door. With the direct mayoral elections issue, there was relatively little attention, a high peek around the second reading in the *Eerste Kamer*, and then attention quickly receded." *CDA Respondent*.

What also mattered was the timing of the debate. Opinion polls such as that of TNS Nipo in 2005 showed there to be 72% support for direct mayoral elections (28% against), but this did not really play a role in the process. When asked about these figures a PvdA politician answered:

"But there were no elections planned anytime around the vote [the second reading in the *Eerste Kamer*, CG] right?" *PvdA Respondent*

So, as a political calculation, it mattered that there was time to deal with possible negative image effects of a vote against more democracy. Or, as Wouter Bos according to several respondents stated, he wanted to be able to "sell" the blocking of directly elected mayors to his

electorate. Apparently many Dutch citizens do want democratic reforms, but the salience of the issue is not very high (Hendriks, Van Ostaaijen et al. 2011).

Situational circumstances

The situational circumstances of the reform to introduce directly elected mayors, other than the general historical background that was already discussed, are difficult to pin down. As seen, the reform has been debated for a long time, so that many societal events have happened in the meantime. None of these societal events have led to a particular call for the introduction of direct mayoral elections, at least not according to those interviewed or the documents referred to in this study. The reform process was started in the beginning of the 1990s. In this period there was a dramatic drop in the election turnout that led to claims of a gap between citizens and administration (*kloof tussen burger en bestuur*). However, the result was that there were calls to do *something*, and not particularly to change the appointment procedure of the mayor.

Later, when the deconstitutionalization process was already underway, there was the electoral upheaval of 2002. The rise of the Fortuyn-led parties Liveable Rotterdam and LPF early in this period and the subsequent murder of Pim Fortuyn also did not lead to reform urgency to specifically introduce the directly elected mayor. There was certainly a shared sense that something was amiss and that something needed to be done to improve democracy, but this did not lead to the introduction of direct mayoral elections. If anything, two things happened. First, the LPF was in favor of more citizen involvement (thus more elected executives and referendums), but failed to become a coherent voice for these reforms, as the party failed quite soon after it got started. Second, these electoral moves showed exactly how volatile the Dutch electorate was. These moves were thus a cause for concern for some of the ruling parties. Instead of working in favor of democratic reform, the volatility showed that transferring power to citizens would be a risky operation. This was particularly the case for the *Eerste Kamer* where the final decision on the deconstitutionalization was to be taken. There were many politicians in the *Eerste Kamer* that were used to politics before heightened electoral volatility was of influence in the Netherlands. If situational circumstances were of influence, they were more likely to have worked against the introduction of direct mayoral elections than in favor of them. Instead of situational circumstances leading to reform, there was no shared event that was used in the reform process to argue dominantly for or against direct mayoral elections.

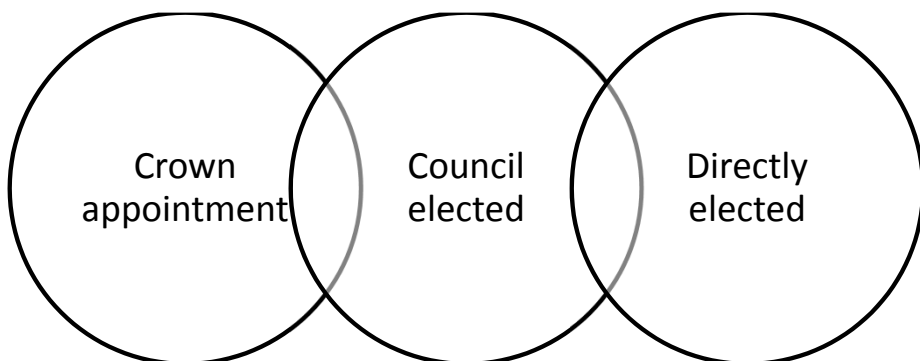
3.2.4 Preliminary conclusions

Before we move on to the second case of this Chapter, the introduction of the corrective legislative referendum in the Netherlands, it is useful to sum up the case just described. We have to conclude that there was a majority for the introduction of directly elected mayors in all the voting rounds in the *Tweede Kamer* and *Eerste Kamer*, and that there was much support for the reform amongst citizens in the Netherlands. However, these majorities did not lead to

the introduction of direct mayoral elections in the Netherlands. An important reason why this did not happen, lies with the rigid requirements for constitutional change in the Netherlands. The minority against the deconstitutionalization required for the introduction of legislation on direct mayoral elections was big enough to block the reform. This had to do with the preferred option for the PvdA, GroenLinks, and SP. They wanted a reform that was perceived to be a smaller move away from the status quo at the time, changing the procedure from the current procedure with heavy council influence to a procedure where the municipal councils would officially elect their mayor. In terms of the perceived change the current system could be placed in the overlapping part between crown appointment and council elected, and the parties that voted against the reform wanted only a small move whilst the coalition parties wanted a larger ideological move (see Figure 3.2). The smaller move would retain the influence of political parties to a larger extent, and better connect to the existing Dutch political culture, which is unaccustomed to incorporating institutional arrangements that stem from pendulum democracy. However, there was little room for pragmatism in both directions, as is shown by the example of the moment and pace of introduction.

Based on the analysis so far, the way the reform process regarding the introduction of direct mayoral elections took place has become clear. The analysis presented above, due to the fact that it looks only at one case, is necessarily specific to the case at hand. In the next section, the issue of the corrective legislative referendum at the national level in the Netherlands will be discussed. After this case has been discussed (and analyzed on its own, like the case of direct mayoral elections), we will be able to compare these two Dutch cases and, perhaps, distinguish more general Dutch reform characteristics.

*Figure 3.2: Perceived different mayoral election methods in the Netherlands**



*the step from the current Crown appointment to direct mayoral elections was seen as bigger than the step to council elected mayors.

3.3 CORRECTIVE LEGISLATIVE REFERENDUM

3.3.1 Introduction and background to the reform process

Like the attempted introduction of direct mayoral elections, the last serious attempt at introduction of a binding referendum, more specifically a possibility to organize corrective legislative referendums, took off with the first Purple Cabinet. The Dutch Constitution stipulates that the Dutch system is a representative system. In order to introduce the possibility of non-advisory referendums, and thus alter the system from purely representative towards a mixed system, several constitutional provisions had to be changed (Articles 81, 89, 128, and 137 needed changes for the proposal presented by the first Purple Cabinet). The process to change these constitutional provisions formally started in February 1996, when a proposal for constitutional amendment was sent to the Council of State for advice and the *Tweede Kamer* was notified of this fact.

In the history of the Netherlands, experience with binding referendums is not up for grabbing. There were two experiences at the end of the 18th century (Klijnsma 2005), and in some small municipalities in the beginning of the 20th century (Steur 2005). There is considerable experience with local advisory referendums, especially in recent years, but there is more experience with interactive policy making, which constitutes a smaller deferral of power (Steur 2005; de Graaf 2007; Boogers 2010; Geurtz and Van de Wijdeven 2010; Van de Wijdeven and Hendriks 2010). There are some attempts during the 20th century to introduce some referendum possibility at the national level (Wiardi Beckman Stichting 1984; Geertsema 1987; Koning 1995; Steur 2005). Early in the 20th century, in 1903, Troelstra, the leader of the socialist SDAP party (which was later to become the PvdA), attempted the introduction of the referendum in order to be able to get rid of the *Eerste Kamer*. As should be clear from the descriptions in this Chapter so far, this proposal it was not transformed into legislation.

After the First World War, the State Commission Ruys de Beerenbrouck was set to work to advise about referendum possibilities, but both referendum and initiative failed to get a majority in the Commission except for two instances: when there was no heir to the throne, and in the case of a constitutional change instead of the second readings (Koning 1995: 233). There was also a proposal for facultative referendums, but all these proposals were voted down in 1921, at which point the socialists voted against referendum possibilities. Immediately after the Second World War there was an attempt to introduce an 'indirect' referendum: to elect a new House of representatives when a constitutional amendment was discussed, but this proposal did not get enough votes in the second reading in the *Tweede Kamer*. A similar proposal was made by the State Commission Van Schaik, which was set to work in 1950 and produced reports in 1951 and 1954, but the proposals regarding the 'indirect referendum' were not translated into legislation by Parliament.

In 1967 the State Commission Cals-Donner was created and although the Commission was clearly against the initiative as a form of referendum, only a small majority was against a decid-

ing referendum. Cabinet Den Uyl decided against following up on the Commission advice. In 1981 on the 10th of November the members of the *Tweede Kamer* Nijpels (VVD) and Wilbers (D66) introduced a motion that noted that the last statements in the *Tweede Kamer* on the matter of the referendum were in 1975 and because of this they wanted a State Commission to research the matter anew. The Minister of the Interior promised that this would happen, so the motion was pulled back on the 12th of November 1982. The Commission Biesheuvel, which also played a role in the issue of direct mayoral elections, was inceptioned on the 17th of May 1982, and it had a scope a bit wider than just referendum possibilities, although the referendum was the main issue for the Commission.

A large portion of the preliminary (presented in March 1984) and final (presented in December 1985) reports discussed the issue of the referendum. The Commission was unanimously in favor of the introduction of a facultative binding referendum, the Commission was divided on the issue of a consultative referendum, and a majority of the Commission was in favor of the initiative. The Commission has several considerations such as the fact that consulting (*'inspraak'*) the people is not actually having influence on policy making and the fact that even the possibility of a referendum would have a preventive effect by forcing politicians to take citizens' views into account.

3.3.2 The reform process: introducing the corrective referendum in the Netherlands

Setting the stage

After the report of the Commission Biesheuvel was presented, it took a while before something happened. It was only in march 1988 that the second (CDA-VVD coalition) Lubbers Cabinet responded to the advice of the Commission. In a memorandum, signed by Lubbers and Minister of the Interior Van Dijk (CDA), the response was dismissive. Cabinet would not proceed with these proposed reforms. Cabinet did not think that the problem such as described by the Commission really existed, and once the reform was implemented it would be a burden to Cabinet. It would damage the representative system and the predicted preventive functioning was not something they agreed with.

In February 1989 the response from the standing committee of the Interior follows. In it, they ask Cabinet 30 questions about the matter of the referendum. Van Dijk responds to these questions within a week, and early in March there is a debate in the *Tweede Kamer*. It becomes clear that there is no chance of a reform process when the speakers of the CDA (De Kwaadsteniet) and VVD (Wiebenga) state that they have no intention in pursuing referendum possibilities. So the motion put forward by D66, doing just that, had no chance of success.

In the period around the election, D66 leader Hans van Mierlo pleads in the *Tweede Kamer* that all its members should critically reflect on their (voting) behavior regarding political, administrative, and constitutional (*staatkundige bestuurlijke en staatsrechtelijke*) reform. Members of the *Tweede Kamer* were made to feel responsible and almost unanimously the *Tweede Kamer*

installed a special commission, the Deetman Commission we already saw in the previous subsection. The report was presented in 1990 and debated in 1991. Contrary to several other topics (including direct mayoral elections), no commission regarding referendum possibilities was formed because of the motion Wiebenga. Wiebenga argued that there was no point in researching this because nothing changed since the report of the Commission Biesheuvel and Wiebenga got support for his position from his own VVD, CDA, and the SGP and RPF.

After another year, in October 1992 when Van Mierlo makes his discontent known regarding the blocking of the Commission that was proposed by the Commission Deetman, the CDA-leader Brinkman, surprisingly makes a shift in the CDA position on the matter. So a year after the other Commissions started working, the Commission De Koning received an extended mandate to look at referendum as a possible change in the relationship between formal politics and citizens in November 1992. The Commission De Koning gave a positive advice on the matter of the referendum although De Koning (CDA) himself and Polak (VVD) voted against the introduction of referendums.

Based on the report Minister of the Interior Ien Dales (PvdA) wanted a renewed debate on the topic. This debate looked to be cancelled right away in December 1993. Three motions were submitted, one by Jurgens (PvdA) to introduce referendums and the initiative, and two by Wolffensperger (D66): one to introduce corrective referendums nationally and one to introduce them subnationally. The first motion by Jurgens was immediately dismissed. Fearing that the same would happen to the two D66 motions Van Mierlo pleaded to postpone the debate on the two motions for a while, so that the topic could be taken into account in the next coalition formation process, that was due in 1994. This proposal was accepted by the *Tweede Kamer*.

A smooth reform process and failing at the last hurdle

In the subsequent process of coalition formation, a unique coalition emerged in which CDA was not a member of the coalition. D66 won 12 seats to arrive at 24 seats (see Table 3.1) so it was not strange that some democratic reforms would be written down in the coalition agreement. Coalition formation to get to the 'Purple' PvdA-VVD-D66 coalition was not simple. Because the four big political parties could not manage to come to a consensus, Wim Kok (later to become prime minister) wrote a coalition agreement with which the parties could agree or disagree. This led to a proposal to which all big parties could agree, but Wim Kok decided to try a coalition with PvdA, VVD and D66.

In the coalition agreement, finalized on the 13th of august 1994, it was noted that: "The introduction of a corrective legislative referendum at national and local level will be developed in legislative proposals for specific execution and constitutional amendment" (Regeerakkoord 1994 vergaderjaar 1993-1994, 23 715, nr. 11: 24).¹⁹ On the 4th of December 1996 Cabinet sends

19 In Dutch: "De invoering van een correctief wetgevingsreferendum op centraal en decentraal niveau wordt voorbereid in wetsvoorstellen ter concrete uitwerking en tot wijziging van de Grondwet."

a proposal, with several constitutional amendments in it, to the *Tweede Kamer*. These constitutional amendments regulate the shape the corrective referendum was to take. Afterwards, the debate in the *Tweede Kamer* focused on several specific provisions in the proposal such as the scope of the topics susceptible to referendum, the number of signatures required to demand a referendum, but also the possibility of a referendum as such. The people taking the lead in this process are the spokespersons of the different political parties.

On the 26th of June 1997 the constitutional amendment proposal received majority support in the *Tweede Kamer* (see Box 3.2). The proposal was supported by the coalition partners, and several smaller parties. The CDA, SGP, GPV, RPF, de Unie 55+ (Union 55+) and Member of Parliament Hendriks (ex-*Algemeen Ouderen Verbond* [General Seniors Union]) opposed the proposal.

“There had been a party commission on the matter. But there was no objective debate. The result [an advice against the referendum, CG] was already determined at the outset, and the commission then works towards the result” *CDA Respondent*.

BOX 3.2 PROPOSAL FOR THE INTRODUCTION OF THE CORRECTIVE REFERENDUM

Proposal for the introduction of the corrective referendum

The proposal to introduce a possibility for corrective referendums in the Netherlands entailed several changes to the Constitution. The first change was an amendment to article 81 of the Constitution which read that laws are made by Cabinet and Parliament together (“De vaststelling van wetten geschiedt door regering en de Staten-Generaal gezamenlijk”). An addition should follow that allowed for the exception to this rule when a referendum was organized in accordance with a new constitutional section (“behoudens de mogelijkheid van een referendum met toepassing van §1A”). This constitutional section was quite specific. For instance it mentioned the numbers of voters that would have to demand a referendum (first 40.000 then 600.000), and specific issues that were exempt from referendums. Article 128 of the Constitution, that deals with the Provincial Councils and municipal councils, would be completed with an article that allowed for binding referendums under similar rules as the national rules. Finally, an addition to article 137 was foreseen. Article 137 was the article discussed constitutional amendments. The proposed article stated that a corrective referendum on constitutional amendments would only be possible after the acceptance of the amendment in second reading by both Houses of Parliament.

After this, the proposal was discussed in the *Eerste Kamer*, where especially the critical stance of the VVD Senators is noteworthy. When it comes to a vote on the 3rd of March 1998, it is no surprise to those involved that the VVD does not unanimously support the proposal. Spokesperson Hans Wiegel states that some Senators would vote against the proposal because of its supposed incompatibility with the existing structure of representative democracy. The proposal is accepted in the *Eerste Kamer* with 40 votes against 27. Those opposing the proposal were the CDA, SGP, AOV, and five VVD members: Verbeek, Wiegel himself, Van Eekelen, Van Graafeiland, and Heijne Makkreel. These five members were thereafter known as the 'gang of five' (*de bende van vijf*).

"The reasoning was: voters already have to go to the polls so often; they do not have the required knowledge; they are heavily influenced by slogans. Well...if you follow that reasoning you should also abolish universal suffrage" *CDA Respondent*.

The elections of 1998 led to a renewed mandate for the Purple coalition, but D66 lost seats relative to the other parties (D66 lost 10 seats to end up with 14 seats, where the VVD won 7 and rose to 38 and the PvdA won 8 to end up with 45 seats). A second Purple coalition was created and the reform process could proceed. The proposal was reintroduced for second reading in the *Tweede Kamer* on the 14th of September 1998. In such a second reading, no changes to the text of the proposed amendment are possible. The debate on the matter is – to a large extent – a recurrence of the debate in the first reading. This was also the case in the second reading in the *Tweede Kamer*, where the proposal did manage to get a 2/3rd majority. The SP, GroenLinks, VVD, D66, and PvdA voted in favor of the reform, and CDA, SGP, GVP, and RPF voted against the reform. A motion by Rehwinkel (PvdA) and Brood (VVD) to create legislation to prevent local authorities from holding advisory referendums on matters they do not have jurisdiction over was accepted with a normal majority because of the support of PvdA, VVD, and SGP.

The process in the *Eerste Kamer* was where the smooth reform process up to that point started to develop in a different way. The most important fact was that, considering the results of the previous vote, all VVD-faction members in the *Eerste Kamer* had to support the amendment. It was clear that the factions that had voted against the proposal the first time, would do so again.

"There is a difference between a personal stance and a political stance. And the political stance was clear [the CDA was to vote against the reform, CG]; I had placed a signature under that position. [...] Nobody in the faction had attempted to claim an exemption, any exemption. [...] We hardly talked about the matter in the faction; it was clear what we were going to vote" *CDA Respondent*.

However, there were five VVD Senators that had voted against the reform in the first reading. This so called gang of five was under considerable scrutiny and pressure from inside their party, such as party leader Hans Dijkstal.²⁰ At the same time, D66 had put pressure on the proceedings with their threat to step out of the coalition if the proposal was not passed. VVD faction members had not responded well to this threat, nor would they have responded well to a threat from the Prime Minister.

There was much uncertainty about what would happen. Senator Bierman for the Independent Senate Faction (*Onafhankelijke Senaatsfractie*) was an uncertain factor. Although he seemed destined to vote in favor of the amendment, he suddenly hesitated – supposedly in order to get some concessions from the Minister of the Interior Bram Peper (PvdA). Senator Batenburg of the AOV was also a strange factor. Although he had voted in favor of the amendment in the first reading, he now stated that he was going to vote against the proposal. In an interview he declared that he did not read the proposal well enough the first time.²¹ There had been contact with Batenburg and Bierman before the vote.

“I talked extensively with Bierman and Batenburg. In those discussions, I always got the feeling that it was a debate that was focused on the content of the reform. Especially Bierman was sensitive for those [content driven, CG] debates. Batenburg too...but in the end his voting behavior was just as unpredictable for himself as it was for us” *D66 Respondent*.

So, as the situation was, with the switch of Batenburg and the other Senators inclined to vote like they did in the previous round, the outcome of the process was really in the hands of the five VVD-senators mentioned above. Of these, Wiegel emphasized that he did not think it was worth causing a crisis in the coalition for²², especially because the numbers required to get a referendum were so high as to make the instrument unusable anyway. At the same time he did not like the claims that, once the reform was passed, these hurdles to referendums could be lowered later on. In interviews with politicians, it was hinted that Wiegel seemed to argue in favor of coalition stability and for passing the reform. So once the other Senators voted in favor, it came as a surprise to many that he did not vote in favor of the reform. Especially after the handshake he gave Prime Minister Kok, who was present in the *Eerste Kamer* during the debate. The handshake was interpreted as a peace offering. So with the opposing votes of Batenburg and Wiegel, the proposal did not get a 2/3rds majority and was cancelled one vote too short.

20 Although Wiegel himself, in an interview has claimed that no pressure was put on him by Dijkstal. (see: Volkskrant 22-5-1999: <http://www.volkskrant.nl/vk/nl/2824/Politiek/archief/article/detail/538054/1999/05/20/Had-je-niet-gedacht-h-egrave.dhtml>)

21 Ibid 20.

22 Ibid 20.

“If people [in Parliament, CG] had the idea that it was a more salient topic it would be dealt with more cautiously. But people have the idea that the topic gets a moderate response from the electorate” *D66 Respondent*.

The reform process aftermath

After the no-vote by Wiegel, a Cabinet crisis followed. On the 19th of May, one day after the vote in the *Eerste Kamer*, Wim Kok sent a letter of resignation of his Cabinet to the Queen. However, some did see possibilities for a reconciliation of the second Purple coalition. This was not a surprise to all those involved.

“I did not get that much response from the party during the process. [...] At the time it was already like what Pechtold [the D66 faction leader in Parliament at the time of the interview, CG] is saying now. We have those topics [democratic reforms, CG] on stock, but we don’t show them in the shop-window anymore. [...] I was not surprised that the break could be fixed so quickly” *D66 Respondent*.

After some meetings on the 20th of May, an agreement was reached. On the 22nd of May Herman Tjeenk Willink was appointed as an *informateur* (person who investigates on behalf of the Crown, whether a proposed Cabinet formation will succeed) for the possibilities of keeping the coalition intact. PvdA and VVD managed to satisfy D66 with concessions such as the promise of a temporary referendum act (*Tijdelijke referendumwet*), which would allow for advisory referendums. Because they were advisory referendums, no constitutional amendment was necessary, but the consideration was that politicians could not really ignore a clear advice by voters. At the same time, a new attempt at constitutional amendment would be set in motion. Because of this agreement, on the 8th of June the three parties decided to continue their coalition.

The Temporary Referendum Act was sent to the *Tweede Kamer* on the 2nd of March 2000, and accepted in the *Tweede Kamer* on the 6th of February 2001. PvdA, VVD, D66, GroenLinks and the SP voted in favor of the proposal. On the 4th of September the same parties supported the reform (except for VVD-Senator Ginjaar) in the *Eerste Kamer*. So the proposal was accepted in the *Eerste Kamer*, and would be implemented from the first of January 2002 to the 1st of January 2005. An initiative by Wijnand Duyvendak (GroenLinks) and Niesco Dubbelboer (PvdA) to remove the time limitation from the law failed in 2004.

These same two Members of Parliament also attempted to start another constitutional process to introduce the corrective referendum and initiative in 2005. In November of 2005 they were joined by Boris van der Ham (D66), and the three of them also initiated legislation to make consultative referendums possible. Although, due to personal changes, Duyvendak was later replaced by Femke Halsema (GroenLinks), who herself stopped working as a parliamentarian in 2011, and Dubbelboer by Frank Kalma (PvdA), these proposals are still awaiting further debate in the *Tweede Kamer*.

Finally, two European related initiatives need to be mentioned. First there is the referendum on the European Constitution of 2005. This was a non-binding referendum on the European Constitution that the ruling coalition agreed upon. However, because all political parties had announced that they would respect the results of the referendum, it turned out to be a quite binding referendum. This EU-referendum was arranged for in a separate law.²³ After this referendum on the EU-Constitution, Geert Wilders (PVV) proposed a similar referendum on the possibility of EU-membership for Turkey. This initiative is still awaiting further debate at the time this was written (December 2011).

3.3.3 The introduction of the corrective referendum: formal procedure, political actors, and situational circumstances

In the previous subsection, the historical development of the reform process of the introduction of the corrective referendum was presented. Attention has also been given to the more institutional elements of politics. In this paragraph, the most striking observations of the way the reform process developed will be presented. These observations are not only based on the outline above, but also the interviews conducted for this study. Where interviews are the main source, this will be mentioned.

The formal reform procedure

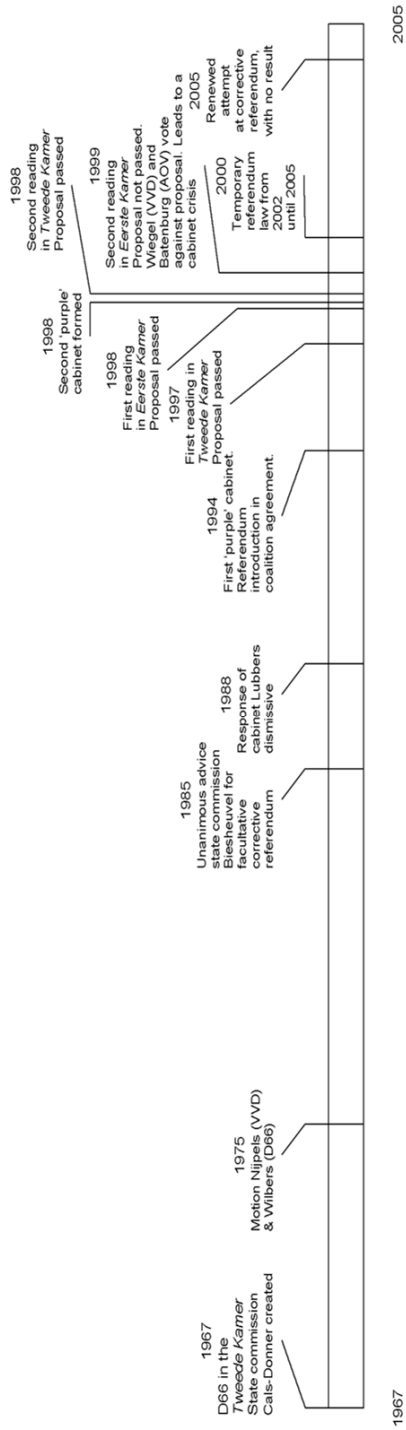
The formal reform procedure was a reform procedure to introduce a constitutional amendment. The introduction process was uneventful if we compare it to the introduction of directly elected mayors. The basic process was similar. The process required two simple majorities in both Houses of Parliament and two 2/3rds majorities in both Houses after elections. However, because of the situational circumstances, the formal process could be followed to the letter without an intervening advice of the *Raad van State*. The constitutional amendment would conceivably lead to new legislation as well, but the potential follow-up legislation was not extensively debated in Parliament, although it apparently did play a role in the fears of Hans Wiegel. There was a considerable level of detail in the constitutional proposal which can perhaps explain the focus on just the constitutional process, but more on this below.

“Debates about details of proposals follow from the compromise-oriented Dutch culture and the connected inability to agree upon fundamental ideas” *PvdA Respondent*

It suffices here, to state that the formal process was followed without informal challenges to this arrangement.

23 Although this legislation referred to clauses from the Temporary Referendum Act (specifically articles 34, 35, 37, 38, 41 paragraph 1, 42, 110 paragraph 3, and 111 of the act)

Figure 3.3 General timeline for the introduction of the corrective referendum in the Netherlands



The actors in the reform process

Political parties

Because Wiegel was the only VVD Senator to vote against the constitutional amendment, there was still a possibility to fix the remnants of the coalition. As just one coalition-related person blocked the legislation agreed upon in the coalition agreement. The question was, whether one member was a party problem or not.²⁴ It has been hinted at in interviews that Wiegel convinced the other Senators to vote in favor of the reform and then voted against the reform himself. If this was a political move to save the VVD's involvement in the coalition or not cannot be confirmed.²⁵ If it was a political move, it would be a well orchestrated political maneuver from the perspective of blocking the reform without incurring too much political costs, but whether this was the case has not been confirmed in interviews.

In public, Hans Dijkstal (leader of the VVD-faction in the *Tweede Kamer* at the time) stated that he spoke with the senators that voted against the proposal in first reading in order to get them in line. This would lead to the conclusion that it was the action of a lone senator, or a well orchestrated political ploy. The VVD was for a long time an opponent of more involvement of citizens in political decision making, in the 1980s they actively blocked any move towards the introduction of binding referendums. And they did so with arguments that were critically received by Koning, who criticized Wiebenga's references to party founder Oud in his dissertation, because Wiebenga presents Oud as an opponent of referendums, which he was not (Koning 1995: 244). Throughout the history of the VVD, there has been a mixed relationship with direct democracy. As a 'conservative-liberal' party, there were always more liberal party members in favor of more direct democratic instruments, but among the more conservative sections of the party there were always opponents of these reforms. These conservative sections have apparently had the upper hand in the party for a long time, which makes the support for this democratic reform – to the extent it was there – all the more remarkable.

The CDA remained firmly against referendums throughout these proceedings, although in the CDA there could also be individual party members that supported referendums. The same goes for the socialist parties, which generally support referendums, but that does not definitely exclude individual members of Parliament and party members to oppose referendums. D66 played a more important role because they threatened to quit the coalition if the referendum proposal failed to make it past the *Eerste Kamer*. This put pressure on the VVD and its Senators that might have worked counterproductive.

24 Source: <http://www.trouw.nl/tr/nl/5009/Archief/archief/article/detail/2557927/1999/05/20/Verkiez+ingen-in-het-najaar.dhtml> (visited on 10/01/2012)

25 Not in the least because Wiegel was not willing to be interviewed about the matter, like Van Thijn. Whether or not their track record plays a role here is not clear, but it is at least a quite formal interpretation of the liberty of a member of parliament to form his or her opinion without orders or consultation ('zonder last of ruggespraak').

D66 was under internal pressure to get this reform passed because it was one of the ‘crown jewels’ of the party (and they had lost seats in the last election so the party needed to get something they considered part of their electoral appeal). At the same time, and one can think about the fact that D66 continued to be part of the coalition after the cancellation of the referendum reform. It has also been said in interviews that even then there were voices in D66 that were getting tired of always being tied to these democratic reforms. There were thus also people that did not care all that much about the blocking of the reform. See the quote above, where it was stated that these topics are no longer on display but only on stock. In any case, it played a role, but not a decisive role in this coalition.

Individual persons

The most decisive role in the reform process regarding referendums was played by individual politicians: Hans Wiegel and Martin Batenburg stand out. Batenburg was still an AOV-representative during the first reading in the *Eerste Kamer*. When the second reading took place, he had quit the AOV after quite some internal struggle (for instance, about his age in combination with his various official functions: he was 80 years old when the second reading took place). Batenburg was not kept in check. Because he was unaffiliated, he was able to change his vote without any repercussions in the form of party disciplining. As such, he was just as influential as Hans Wiegel, even though afterwards the night of the failed introduction was named after Wiegel in the media. Wiegel, however, was part of a coalition faction. As such, political rules ‘dictate’ that you should vote in line with your party, especially when your vote is decisive and even threatens to blow up a coalition in which your party is participating. However, Wiegel, like most members of big political parties in the *Eerste Kamer*, was also a politician with a considerable track-record and at the end of his political career. Thus, there was no effective threat to stop Wiegel from deviating from the party position on the matter at hand. In a sense, Wiegel was just the messenger. Leendert Ginjaar (VVD senator during the vote as well) was for instance not a fan of the referendum either. He was overheard saying to Wiegel ‘it was a bad proposal anyway’. His voting against the temporary referendum act supports this thought.

Other actors

The most important other actors are again Commissions. We have seen that the Commission Biesheuvel especially, but also the Commission De Koning, pleaded in favor of the reform. The Commission Biesheuvel was, of the two, the more influential Commission, as it was thorough and unanimous in its referendum advice in 1985. This meant that it was a proposal that could be supported by a cross-section of politics in the Netherlands. However, CDA and VVD were not inclined to follow the advice. It was only later, when the PvdA and D66 became more dominant, that the VVD had to accept this referendum as a bargaining chip for the coalition agreement. It is also noteworthy that the Commission Biesheuvel was created in part due to the activities of a lobby organization: *Actiecomité ‘Referendum: Ja’*. This organization managed

to grab public attention by offering petitions for the introduction of referendums early in the 1980s (Couwenberg 1990; Burkens, Kummeling et al. 2006: 296). Later, during the actual reform process, this organization did not play a role.

The general public

The general public did not really play a role in the reform process, except of course in the above mentioned action committee. There was a lot of debate in the two Houses of Parliament about what the number of signatures to be gathered in order to demand a referendum should be, and what the percentage of eligible voters that needed to vote in order for the referendum to be valid should be. However, these were debates about the constitutional amendment and do not consider the public opinion on the matter.

The desire for referendums as an instrument was not seriously measured in the Netherlands at the time – this started around the second reading in the *Eerste Kamer*. However, the data collected since then show a clear and consistent public preference for referendums as an instrument. The Dutch Socio-Cultural Planning Agency finds steady support for it amongst around 80% of the people (Hendriks, Van Ostaaijen et al. 2011: 19). The fact that over 60% of the eligible voters turned out for the consultative referendum on the Constitution for the European Union in 2005 can serve as proof for a steady and continuing desire to have a vote on those issues that are considered important by Dutch citizens.

Situational circumstances

Even though the process to introduce the corrective referendum started after the drop in electoral turnout with the municipal elections of 1990, the attempted introduction of the corrective referendum in the Netherlands did not take place in a context of crisis. When the second reading in the *Eerste Kamer* took place in 1999 the second Purple Cabinet was running quite smoothly. The articulation of societal unrest in a crisis-like atmosphere became more prominent only several years after 1999, with the rise of Pim Fortuyn and his political parties. At the time of the second reading in the *Eerste Kamer* the country was running smoothly in terms of the economy. The economy developed in a very positive way during the 1990s, so seemingly politicians were doing their jobs quite well. Democratic reforms were not the most salient topics of debate at the time.

The debate on the introduction of the corrective referendum has been a long lasting debate that had lingered for several decades when the second reading in the *Eerste Kamer* took place (and is still lingering ever since the '*Nacht van Wiegel*'). Several Commissions have advised the introduction at various points in time and majorities have been attained. Not, however, the required two-thirds majority in the *Eerste Kamer* to change the Constitution. There was no situational circumstance that caused a crisis that led to the introduction of the corrective referendum.

3.3.4 Preliminary conclusions

Before the two cases are compared to one-another, it is useful to formulate some preliminary conclusions based solely on the case just analyzed. The first conclusion is that there were majorities for the reform in all the voting rounds in the *Tweede Kamer* and *Eerste Kamer*, and that there was a majority of Dutch citizens in favor of the introduction of the corrective referendum, although this did not play a big role in the reform process. These majorities did not lead to the introduction of corrective referendum in the Netherlands. An important reason why this did not happen is formed by the rigid requirements for constitutional change in the Netherlands. The minority against reform was big enough to block the reform. Especially in the case of Wiegel this was typical, because he voted against the party line on the matter. The reasons for this vote are best considered systemic as Wiegel saw the referendum as a threat to representative democracy. In his view representative democracy could not deal with this direct democratic instrument so he blocked it when he had the chance.

In the subsection below, these two Dutch reform cases will be compared in order to see if there are aspects of these reform processes that are typically Dutch.

3.4 COMPARING THE DUTCH REFORM CASES

By comparing these two Dutch reform processes we can distinguish some characteristics of democratic reform processes in the Netherlands. These characteristics will be more structural than when one delves into only one case, but not the explanatory characteristics for all democratic reforms in the Netherlands. Fortunately, that is not the goal of the comparison. Even if it were the case it would be difficult to attain, because the political actors involved in a reform process and the situational context in which the reform takes place can change quite rapidly. With this preliminary comparative analysis question four of the analytic framework will be answered. That was the question that deals with the commonalities and differences between the reform cases in one country. As the single cases were split up in terms of the formal procedures, the actors, and the situational circumstances, it is logical to use the same subjects in the comparison for the Netherlands.

3.4.1 The formal reform procedures in the Netherlands

Both reforms required a constitutional change that turned out to be impossible to reach because of the high quorum needed to get a constitutional change passed in second reading in the *Eerste Kamer*. This high quorum gives considerable veto power to minorities in both the *Tweede* and the *Eerste Kamer*. Whereas the *Tweede Kamer* did vote with two-thirds majorities to introduce elements different from the existing consensus democracy, this was certainly not the case for the *Eerste Kamer* (Hendriks 2010). The constitutional difficulties are clear and in

line with theorizing that focuses on the barriers to reform and veto players (Koppenjan 1993; Kickert, Klijn et al. 1997; Tsebelis 2002; Koppenjan and Klijn 2004; Ostrom 2006; Vatter 2009).

Typical for the two Dutch cases, was the level of detail involved in the debates on the constitutional aspects reform cases. In the case of the introduction of direct mayoral elections, this level of detail was not present in the constitutional process as such, but was 'forced' into the process because of the perceived time pressure involved in the introduction of direct mayoral elections. In the case of the corrective referendum, there was considerable detail in the constitutional proposal already. The debates, in other words, were not only focused on the principal issue of the democratic reform, but were also debates about the details of the situation that would follow. This has to do with the interests of the different political parties involved and their views on Dutch democracy. It shows, at least, that political parties in the Netherlands apparently want to know quite sure what the constitutional rules are and what the potential implications will be, before they vote in favor of a democratic reform.

3.4.2 *The actors in reform processes in the Netherlands*

In terms of the behavior of actors in these Dutch cases we get a mixed picture for the different types of actors. In general, political parties seem to function in a fashion that is compatible with rational-choice theories. The party leadership deliberates and sets out a goal and party members in Parliament vote in line with this party stance. However, the *Eerste Kamer* is less docile in that respect than the *Tweede Kamer*. Whereas the members of the *Tweede Kamer* are often party members that are still working on their political career, the members of the *Eerste Kamer* are generally politicians with a long track record at the end of their career. These members have fewer worries regarding the future of their political careers and can more readily afford a course against party leadership.

In both reform cases there was one such Senator with seniority that was the focus of (media) attention. In the case of the corrective referendum it was Hans Wiegel. In this case it was a matter of one man voting against party line. In the case of direct mayoral elections there were competing sounds from within the party. The party leadership in the *Tweede Kamer* – especially Wouter Bos – was in favor of direct elections, as was the party commission on the matter. However, the party commission did not offer a unanimous advice and the party members had voted against direct elections in the first party referendum for the PvdA in its history. This provided leeway for the PvdA *Eerste Kamer* faction to move in both directions. There were voices arguing in both directions. However, within the faction a sense of unanimity was created in the internal debates and the faction voted as a block. Ed Van Thijn functioned as a lightning rod for the media. So we have two politicians with imposing track records that went against public opinion and that now have the cancellations of the reforms named after them. In the case of Van Thijn this is typical, as he has always been seen as a person in favor of democratic reforms.

Party leadership does not have real influence on Senators because in the end they decide on their vote themselves, but also because these are often settled politicians.²⁶

In the case of direct mayoral elections the PvdA not only had the backing of their members, but they knew that the status quo came very close to their preferred outcome of indirect elections.

“It has been held against me that I was constantly taking small steps towards council elected mayors. [...] This was especially difficult for the VVD, because they were in favor of the Crown-appointment, which was being undermined” *PvdA Respondent*.

At the same time, they also knew that the normal legislative proposal to follow the constitutional amendment was being debated in the *Tweede Kamer* and would create direct mayoral elections. It was simply not in their interest to vote for deconstitutionalization. It is (perhaps) not constitutionally elegant to take a normal legislative procedure into account, and this was argued by several politicians involved, but, according to the PvdA, it was also not elegant to start dealing with these issues whilst the deconstitutionalization had not been formalized. Typical was also the attempt by Senator Jurgens to stop the deconstitutionalization on procedural grounds, which one can value positively or negatively depending on one's normative position.

It might not be a coincidence that these reforms were blocked by the *Eerste Kamer*. Considering the build-up of the *Eerste Kamer*, which contains many constitutional law experts, and experienced politicians.

“The *Eerste Kamer* is very reserved most of the time, except for constitutional issues. Senators feel that they have a special responsibility for constitutional issues” *SP Respondent*.

In the case of the referendum there is no real evidence of power-political considerations by the VVD, although the final outcome was quite convenient for them from that perspective. An important reason for the blocking of the introduction of the corrective referendum was simply that Wiegel really did not want this democratic reform. Of course, the decision to go along with some issue not really supported by the party is a feat of power-politics as well. It means compromising one goal in order to gain another.

Power-politics were also played by D66 in both reform cases, but unsuccessfully. In the case of the referendum, D66 pressured their coalition partner VVD to vote in favor of the reform. However, this pressure did not land well with the VVD Senators. The same goes for the pressure of D66 in the mayoral elections reform. These topics, known as the D66's 'crown

26 Senators also complained of a lack of respect when new attempts at the introduction of referendums or direct mayoral elections followed so quickly after they had turned the proposal down.

jewels', are viewed by many politicians as topics interesting for D66 alone. This does not seem to help the chances of reform.

"In a sense, the Constitution is the referee's rule book [*scheidsrechtersboekje*, CG]. It is annoying that it is so rigid, but at the same time it is a good thing too. However, it is not a good thing when one team in play [D66, CG] sees it as their responsibility to take care of this rule book. Especially not if it is such a small group" *SP Respondent*.

The quote above also points to a second aspect of the considerations of political parties. They are acutely aware of the size of their political opponent. D66 has been arguing for democratic reforms for 40 years. They have never been one of the biggest parties in Parliament (although they have had considerable electoral success at certain points in time). Political parties in the Netherlands know quite well how big D66 has grown at times. It does not disturb them enough to feel the need to give in to the reform demands of D66 and thus potentially eliminate a part of the electoral base of D66.

The *Tweede Kamer* wanted to move forward with the actual legislation for direct mayoral elections and D66 reasoned that it was a 'now or never' situation. This meant that both the constitutional amendment and at the actual legislative process that depended on this amendment were debated in Parliament at the same time. This did not function well for those wanting the reform to take place. The PvdA interpreted the introduction of direct mayoral elections as a 'now and forever' situation. They thought that one could never remove the right to vote for mayoral elections once it was implemented. The maximum result would have been to get only the constitutional amendment, but this was unacceptable to the D66 members that wanted a reward for joining the coalition. Furthermore, not explicitly stating for what purpose the de-constitutionalization was taking place would lead to debate in the *Eerste Kamer* too, because it would be completely unclear what the effects of the constitutional reform would be. Such uncertainty does not go down well in Dutch politics.

Despite many promises to amend the legislative proposal by Minister De Graaf to the PvdA faction in exchange for their support for the deconstitutionalization in the second reading in the *Eerste Kamer*, the PvdA would not budge. De Graaf figured that moving on had no point and this led to a too limited majority in the subsequent vote. Similarly, Wiegel did not argue on grounds of the form of the referendum, but instead thought that the instrument was incompatible with the Dutch representative system.

There was, of course, much need for deliberation and debate to get everybody to vote for both the reform cases discussed in this Chapter to even get to a second reading in the *Eerste Kamer*, but in the end all these debates did not lead to the required two-thirds majorities in the *Eerste Kamer*. There were debates about all sorts of details, but in the case of the corrective referendum these did not matter because of the votes of Wiegel and Batenburg. Of course, they did matter in a way, because they were noted in the proposed amendment. In the case

of direct mayoral elections, the exact details did not matter either, because the party with the decisive vote in the deconstitutionalization procedure was, in the end, mainly interested in the election procedure as such and not the details.

Institutional purity thus matters a great deal in these reform cases (Hendriks 2010; 2011). Whether or not something is done to change the democratic system and change the balance of power is what truly matters. These reforms were seen as a threat to the status quo of the representative system – and thus their parties’ (and perhaps their own) role in the system – by a minority of the representatives, but each time a minority that is big enough to block constitutional reform. That is one instance of institutional purity as an argument. Another use of this argument was developed in the debate around direct mayoral elections. The only acceptable outcome seemed to be one where all municipalities would get direct mayoral elections, all at the same time. The same goes for the introduction of a referendum possibility, where much detail was to be arranged in the constitutional text. It seems to follow from these Dutch cases that the exact arrangements are seen as very important, more important than the general democratic ideal. This also has to do with a specific definition of equality. Equality is of vital importance because allowing different electoral arrangements to exist in different municipalities was considered as inconceivable.

The opinion of citizens did not really matter in the reform cases. Opinion polls were not seen as very interesting, even though they showed a clear demand for these reforms. The quote regarding elections soon after the vote in the *Eerste Kamer* reflects this. There is logic to this. Even if there were elections, a democratic reform would probably only be a limited issue as the body that failed to pass the reform was the *Eerste Kamer*. The *Tweede Kamer*, the body that normally gets more media attention than the *Eerste Kamer* and the only national body that is directly elected did not ‘fail’ in these reforms. The *Tweede Kamer* passed the deconstitutionalization twice. *Tweede Kamer* parliamentarians and Cabinet members even tried to pressure Senators into falling in line. Although there are politicians that care very much about the opinions of the general population, there is always a sizeable minority that is unmoved by opinion polls. Because of the general institutional structure and specifics of the constitutional amendment process, there are no repercussions for these politicians from their parties or from citizens.

In terms of other parties involved, there is also not much to be said. The civil service played only a limited role. The role played was one in service of politics. In interviews, any steering influence of civil servants is denied, in most interviews the topic was not even addressed as salient at all. The decisions are political decisions and the topics lend themselves to political debate as they are not so technocratic as to allow for much domineering by civil servants. At the same time, debates about ‘the’ referendum are short-sighted and deserve more detailed debate in the media and Parliament.

Pressure groups were active in all reform processes, but their influence it is hard to assess. For instance, the pressure group *Actiecomité Referendum: Ja!* contributed to the creation of the state

Commission Biesheuvel in the early 1980s, but how can we further put value on this pressure group? There were numerous opposing forces in the elected mayor case, but neither in official debates, nor in interviews were these opposing forces mentioned as something that mattered for the development of the process. Opposition within party democracies, not within Parliament, seems to have been a more likely place to have success with ones lobbying against a reform.

3.4.3 *The situational circumstances of the reform processes in the Netherlands*

In the reform cases in the Netherlands, there were no situational circumstances that led to reforms. This is not to say that there were no political events during the reform processes. However, although these events could be interpreted as crisis-events that urgently required democratic reform as a response, this did not happen in the Netherlands.

The situational circumstances that could have played a role in the two reform cases show overlap and difference. In terms of overlap, we can recall that both reforms have been debated for a long time and have been recurring on a regular basis since the 1960s. Equally, both reform cases were influenced by the steady drop in electoral turnout early in the 1990s and the subsequent debates about the gap between citizens and administration (*kloof tussen burger en bestuur*). Furthermore, the reform to introduce directly elected mayors also saw the rise and murder of Pim Fortuyn and the dramatic rise of electoral volatility in the Netherlands. However, these contextual developments did not push political parties to vote in favor of reform.

In a sense, it seemed to work in the opposite direction when the constitutional amendment required for the two reform cases got so far as the second reading in the *Eerste Kamer*. For the members of the *Eerste Kamer* the protection of the constitutional order is an important aspect of their work. The increase of electoral volatility and the fact that even a political murder happened in the Netherlands could well have served as an argument against reform for politicians in the *Eerste Kamer*.

Thus, the Dutch reform cases are peculiar because of the absence of situational circumstances that clearly helped the reform move forward or clearly stopped the reform from being implemented. Party-specific considerations played a more important role. The way in which the two reforms were blocked, in the end, was not influenced by situational circumstances but by the considerations of the PvdA in the case of direct mayoral elections and the considerations of Wiegels and Batenburg in the case of the corrective referendum.

3.5 DEMOCRATIC REFORM IN THE NETHERLANDS

The two Dutch reform cases show similarities and differences. Obviously, there is not one factor that can be singled out in order to explain the failure of these reforms to get passed, but in the interplay between various actors (sometimes the same individual actors in both reform processes) against the same historical background there are similar patterns that emerge.

As was predicted, the inability of Dutch politicians to fundamentally change the position of citizens in relation to officials and legislation can be explained to a considerable extent by the institutional barriers that are in place (Andeweg 1989; Tsebelis 2002; Andeweg and Thomassen 2011). Especially the second reading in the *Eerste Kamer* appears to be a hurdle that is too high to be taken. One can understand why, earlier in the 20th century, attempts have been made to change the position of the *Eerste Kamer* (even to remove its role) in the process of constitutional amendments. There was much debate – also in the interviews – about the position of the *Eerste Kamer* as an institution that is not elected directly by the people, but indirectly. Do they have the required legitimacy to justify such an influential position? The *Eerste Kamer* obviously thinks so itself, but one can question the ultimate legitimacy of an institution that consistently blocks reforms that are both wanted by large majority of the population and not, in themselves, a threat to the constitutional state as such.

However, this specific institutional setting (perhaps in combination with other factors such as culture, happenings, and personalities) has led to a specific way to view democratic reforms and what they should entail. Dutch politicians (especially Senators) are limited in their interest in opinion polls. This lack of interest is understandable, as there is no real reason to be worried about opinion polls because Dutch citizens do not hold much formal power against their representatives apart from general elections. In these general elections, other issues apart from democratic reforms tend to dominate. Informally, citizens might have more influence if they could demonstrate that citizens not only want democratic reforms but also care about them. As it currently looks, large majorities want democratic reforms, but the topic does not seem very salient. Although this was originally not the case, D66 has moved away (to some extent) from their original platform of democratic reform to become a more general liberal progressive party. This lack of a need to be responsive is even clearer in the *Eerste Kamer*, which is elected by an electorate body based on the number of politicians in the provincial councils.

Because of the high quorums for constitutional reform combined with a limited need for responsiveness, Dutch politicians can be so focused on the exact shaping of a reform. From a legal perspective this is correct: if parties have a blocking position they should be able to use it. However, considering that people tend to be in favor of some broad issue like ‘the referendum’ or ‘the elected mayor’ it becomes strange when the debate focuses on details of a reform and not the general wish. This is especially the case if, in the end, the reform is then blocked because of a principle, and not because of the detailed arguments: why was detailed debate then necessary at all? In opinion polls citizens show a preference for the democratic reforms discussed in this Chapter, but debates in Parliament are focused on the details and not the democratic principle. In the end the matter is stopped because of a principle. What were those debates for then? If Wiegel knew he was not going to vote in favor of the proposal, could he not have said so earlier on, so that the debate would have developed in a different way?

Of course, the fact that Dutch organizations representing the interests of different professional groups (in the case of the direct mayoral elections) as well as individual political actors

were skeptical about reforms or even against reforms did not help. But even if this was the case, the final decision was really in the hands of the politicians (in the *Eerste Kamer*) that could vote on the reforms. This is further supported by the fact that there were no specific situational circumstances that were referred to by political actors to argue in favor or against reform. There were no events that unequivocally triggered the reform processes, nor were there events that unequivocally blocked the reform process from proceeding. In the end, the reforms were blocked by political decisions in the *Eerste Kamer*.

Whether or not these conclusions are typically Dutch, or perhaps more generally seen in consensus democracies, will become clear after the analysis of the two other country-cases dealt with in this study. In the next Chapter democratic reforms in Germany will be discussed, and in the Chapter after that democratic reforms in Austria.

Chapter 4

**Democratic reform
processes in Germany**

4.1 INTRODUCTION

In this Chapter, the introduction of direct mayoral elections and the introduction of deciding referendums in several federal states in Germany will be discussed. The German reforms are subnational reform cases. Germany is a federal state and there is quite some room for independent actions by the states. This room for independent action lies mostly in the transition of federal policies to local policies, but also in a limited set of local policy areas such as education (Benz and Meincke 2006; Schmidt 2007; Benz and Zimmer 2011). The position and level of autonomous power of the federal states in the German system was a reason for a federal reform in 2006 (Jeffery 2008; Scharpf 2008). This federal reform was not a particularly smooth process. The inabilities of pressing through democratic reforms at the national (federal) level (including the recent federal reform in 2006) have been thoroughly described by Scharpf (Scharpf 1988; 2006; 2008; see also Auel 2008) and inspired him to develop the concept of the joint-decision trap (*Politikverflechtungsfalle*). This joint-decision trap has to do with the inability of the *Bundestag* to come to an agreement with the *Bundesrat*. The latter is made up out of representatives of the different state governments. The joint-decision trap is a result of the difficulty of representatives of national interests to come to an agreement about reforms with representatives of specific subnational interests.

The reform cases discussed in this Chapter all take place at the level of the federal states (*Länder*). This is a different institutional level than the level at which the Dutch reform cases took place. This difference in both country and institutional level results in different formal procedures from the Dutch reform cases we saw in the previous Chapter. As will be shown, these differences in procedures do have an impact on the reform processes in various ways. It is also worthwhile to note that, even if the reform would have to take place at the national level, there would still be institutional differences that could impact the reform process. In this sense, it does not significantly alter the comparison between the reform cases.

As in the previous Chapter, I will start with a historical introduction to the development of the German political structure in order to get the historical background in focus. In dealing with the reform cases, more attention will be given to the starting positions of the different *Länder*, as these positions matter for the reform processes. After each of the case-descriptions an analysis of the reform process will be offered. In these analyses, the most important and striking events will be brought to the fore. Keep in mind that the subsequent introductions of directly elected mayors and referendums in different *Länder* are seen as two reform cases in this study. Were another approach used, the German cases could also be analyzed as more than two reform cases. However, it will become clear from the case descriptions that these reform cases are clearly connected to one-another. The choice to see these series of reforms as two cases can thus be justified. In subsection 4.4 the two analyses that follow from the reform cases will be briefly compared with each other and related to the analytic framework such as developed in Chapter 2.

4.1.1 Background: a (historical) sketch of German political institutions

Germany, a 'new' country

The German state, as it exists today, is for a large part the result of the aftermath of World War Two. The goals of the allied forces for Germany were denazification, demilitarization, democratization and decentralization (Green, Hough et al. 2008: 22). The German state was divided into several territorial parts by the allied forces. Because of this, the old federal states could not be recreated in the new state. Instead, except for Bavaria and Hamburg, new federal states were carved that had no clear historical precursor (Benz and Zimmer 2011: 151). The Constitutions of the different federal states were ratified in 1946 and 1947. This was before the federal Constitution (the Basic Law) was ratified in 1949. The Constitutions of the federal states were heavily influenced by the respective occupying force in a state.

Even though the different occupation zones were influenced by their respective allied forces, these zones had a history of their own. Even if we do not take the Constitution developed after World War Two as our starting point, Germany is a young country. Only in 1871 was the first German Constitution drawn up and were several smaller states – the largest of which was Prussia – unified by Otto von Bismarck. The potential influence of the historical development of a state should not be underestimated. Historical events and patterns can develop into a state traditions (Putnam 1994; Flyvbjerg 1998; Loughlin and Hendriks 2011). The German *Länder* differ from each other, and these differences – to some extent – can be traced back to the histories of these states. The southern states, for instance, are closer to the Alps (and thus closer to Switzerland and several Austrian states) and tend to have more experience with forms of direct democracy.

Germany as a whole, the Federal Republic of Germany, can be said to have state society relations that support consensus democracy (Lijphart 1999; 2008; Vatter 2009; Benz and Zimmer 2011: 147; Flinders, Vatter et al. 2011; Loughlin and Hendriks 2011). There are, for example, many corporatist bodies that are of influence. Think of trade organizations and unions, but also the previously mentioned structure with its joint-decision making. It is somewhat different for the states. “Due to the particular state tradition and the sequential process of democratization in Germany, it is not possible to characterize subnational democracy in Germany with a single model. The evolution of decentralized bureaucracies, local government, federalism, parliamentary democracy, and relations between government and interest associations at different times gave rise to differing patterns of politics and democracy” (Benz and Zimmer 2011: 149) .

The differences between the federal states of Germany, were, for instance reflected in their respective types of local government. Germany is a state with a federal (*Bund*), state (*Land*), and local (*Kommune*) level. In between the *Land* and *Kommune* level is also an intermediary level of the county (*Kreis*), although some bigger cities do not belong to a *Kreis* (*kreisfreie Städte*). At the same time, there are also three city states (*Stadtstaaten*: Berlin, Bremen, and Hamburg) which combine both the authority of the *Land* and the *Kommune*. All these levels have their own

scope of authority and are in some sense restricted in their possibilities to act. All the *Länder* have their own traditions, including the shaping of their local politics. The political structure of Germany is schematically depicted below in Figure 4.1.

The federal Constitution, known as the Basic Law, is guarded by a Constitutional Court (*Bundesverfassungsgericht*). This Constitutional Court sometimes plays an important role in the politics of Germany. It has recently (in 2011) produced judgments on the constitutionality of European laws in respect to Germany's Constitution. When we look at Germany, "[i]n its form Germany's popular sovereignty is a mixture of majoritarian and consociational democracy. Majoritarian democracy is particularly visible in the power struggle between political parties and in elections, consociational democracy in contrast particularly in the entanglement of federal and state governments and the hurdles for constitutional amendments, which require 2/3rds majorities in both *Bundestag* and *Bundesrat*" (Schmidt 2007: 36, translation CG).²⁷ Furthermore, representative democracy is dominant at the federal level in Germany (Schmidt 2007: 36).²⁸

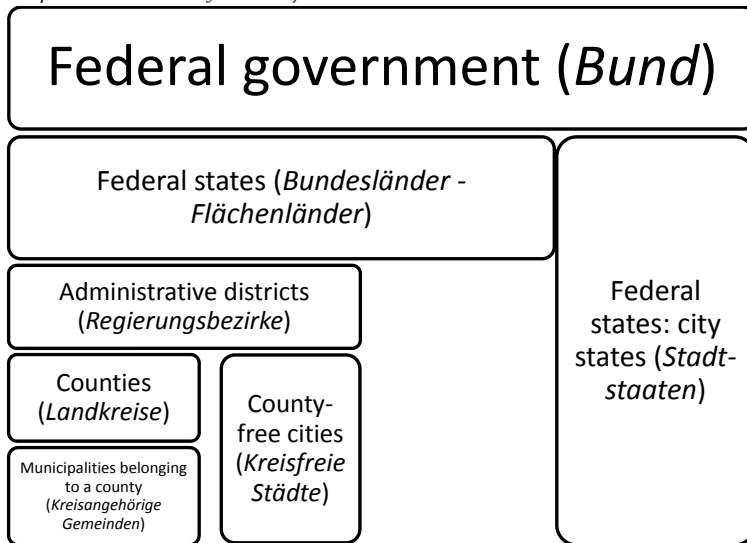
There is a two chamber system at the federal level, with the *Bundestag* being the nationally elected Parliament and the *Bundesrat* – with representatives from the governments of different *Länder* – functioning as a Senate. The *Länder* all have one-House Parliaments as demanded by the Basic Law. In the case of the city-states, this House is also the municipal council. The fiscal capacity and autonomy of the *Länder* matters for the room they have to develop their own policies and thus for the attractiveness of elections for voters. Of course, there are always issues at the *Länder* level that national branches of political parties can take positions on, but at the same time, "Despite [...] regional variation, cooperative federalism and the vertical integration of party organizations have caused national issues and conflicts to predominate in subnational elections, whereas genuine *Land* topics are mostly of subordinate importance" (Benz and Zimmer 2011: 156).

In the relatively short time since World War Two, Germany has managed to become a highly institutionalized country with a firmly entrenched democracy. This is quite special because of several reasons. One of these reasons is the experience with the precursors to the current German republic. These two precursors were main players in the start of two World Wars. The post-war experience is also typical, with Germany being divided into two countries on the break-line between Eastern- and Western-Europe. This led to the peculiar situation that only about 20 years ago, Europe saw the reunion of East and West Germany by the admittance of East Germany into the West German federation. In effect, this meant adding several new

27 "Der Form nach ist Deutschlands Volksherrschaft eine Mischung aus Mehrheits- und Konkordanzdemokratie. Die Mehrheitsdemokratie ist vor allem im Parteienwettbewerb und in den Wahlen verankert, die Konkordanzdemokratie hingegen hauptsächlich im Bund-Länder-Geflecht und in den Zustimmungshürden für Grundgesetzänderungen, die die Zweidrittelmehrheit im Bundestag und im Bundesrat erfordern" (Schmidt 2007: 36).

28 "Direktdemokratie auf Bundesebene galt den Verfassungsgebern als << eine Prämie für jeden Demagogen >>" (Schmidt 2007: 36).

Figure 4.1: The political structure of Germany



Länder into the German federation. These *Länder* had to develop a new democratic set of institutions, for which they looked at the other German *Länder* (Schmidt 2007).

4.1.2 Moving towards a different democracy?

The reunification of Germany took place at a time when, in Germany as in many other advanced democracies, there were debates going on about the problems of democracy. For a part this related to budgetary issues and the question of the scope of activities of states. These debates have been identified as a reform driver for mainly NPM-type reforms (Pollitt and Bouckaert 2000). For another part, this related to the way democracy itself functions. The German ‘word of the year’ in 1992 was not *Politikverdrossenheit* without reason (it means something like aversion against politics or political apathy). However, attempts to change political structures do not become a success easily, as is supported by the 1997 word of the year: *Reformstau* (reform gridlock). There were people that wanted to create an entirely new Constitution at the time of the German reunification, but this did not happen. The issue of a new Constitution pops up now and again because, according to some, “the Constitution sharply delimits the taxing capacities and steering possibilities of politics, slows the pace of politics, and works against appealing politics” (Schmidt 2007: 40, translation CG).²⁹

As said, it was originally Fritz Scharpf that spoke of the ‘*Politikverflechtungsfalle*’ in Germany. It regards the way in which different governmental organizations intermingle and complicate

29 “das Grundgesetz die Steuerungskompetenz und die faktische Reichweite der Politik scharf eingrenzt, das Tempo der Politik drosselt und einer anspruchsvollen Reformpolitik hohe Barrieren entgegstellt” (Schmidt 2007: 40)

decision making because of this. In Germany, this is especially the case at the federal level – the level on which Scharpf compares German decision making processes with EU decision making processes. There is intense competition between the *Länder* over financial regulations and the direction in which tax revenues are (re)divided (Benz and Zimmer 2011: 153). These types of struggles can lead to stalemate at the federal level (Scharpf 2008). So can the ever going struggle between federal level (represented by the *Bundestag*) and state level (represented by the *Bundesrat*) over political powers and influence in general.

The federal reform of 2006 was initiated to solve some of these problems by attributing powers more clearly to either the federation or the *Länder*. It was thought that this would limit the joint-decision trap. The exact ramifications of the 2006 reform are not yet clear. Whereas some view the reform as a longstanding tradition of centralization (Schmidt 2007), others state that – in fact – the reform was a disappointment that has not solved any problems and still leaves a joint-decision problem (Scharpf 2008). At least it seems that neither the federation nor the *Länder* can be regarded as the clear winner of the reform. The financial struggles between the *Länder* and the struggles about the exact organization of the federation do not matter for the reform cases discussed in this Chapter.

Starting in the early 1990s all the *Länder* have endeavored to reform their respective democracies (Wollmann 2001). These reforms have brought the different *Länder* closer together in terms of their structure (Haus 2005), but they still come from quite divergent systems and traditions. Wollmann (2002) connects the introduction of these democratic reforms with the administrative reforms of the '*Neue Steuerungsmodell*' as a move to 'politicize' politics on the one hand and 'managerialize' administration on the other hand (Wollmann 2002: 82). There were also various incentives to bridge the distance between citizens and politics in a way that mixes these political and economic aspects such as *Bürgerkommunen* (citizens communities). In these *Bürgerkommune* citizens are actively involved in policy creation in their neighborhoods in a wide variety of ways, with the goal of developing better policies for the citizens in these areas (Reichard 2003; Vetter and Kersting 2003; Gabriel and Eisenmann 2005; Holtkamp 2007).

The wave of political reforms started in Schleswig-Holstein in 1990 and Hessen in 1991 (Wollmann 2001; Van der Kolk and Vetter 2004). In general, these reforms entailed the introduction of directly elected mayors (in those states that did not already have this provision – i.e. all states except Bavaria and Baden-Württemberg), changes to the electoral procedures at the local level, and the introduction of several direct democratic opportunities such as the referendum and the initiative at the *Länder* level.

In the following two sections, the reform movement to introduce direct mayoral elections in several *Länder* and the introduction of referendum possibilities in several *Länder* will be discussed. In contrast to the chapters about the Dutch and Austrian reform cases, where quotes are used in the current Chapter, no further specification will be given about the origin of the quote. Less interviews were conducted for the German cases because of the availability

of many academic descriptions of (aspects of) the reform cases discussed in this Chapter. The content of quotes could easily be traced back to individual respondents because there are few respondents. For most respondents this would not be a problem, but for the sake of uniformity in dealing with the sources of the quotes the choice has been made to simply refer to the sources of these quotes as *Respondent Germany*. After the two case descriptions, there will be a comparative analysis of these reforms in Germany.

4.2 DIRECT MAYORAL ELECTIONS IN THE GERMAN LÄNDER

4.2.1 Introduction and background to the reform process

The German municipalities are democratic entities that have their own revenues. These revenues are protected in the Basic Law (Benz and Zimmer 2011: 160). At the same time, municipal politics are defined by the *Länder* (Wehling and Kost 2010: 8).

There are patterns that were distinguished between the different German municipal structures before the reform process started. These patterns resulted in the distinguishing of four basic models (Vetter and Kersting 2003; Holtkamp 2007; Schmidt 2007; Holtkamp 2008; Wollmann 2008; Wehling and Kost 2010):

- The North German Municipal Constitution (*Norddeutsche Ratsverfassung*)
- The South German Municipal Constitution (*Süddeutsche Ratsverfassung*)
- The Magistrate Constitution (*Magistratsverfassung*), and
- The Mayoral Constitution (*Bürgermeistersverfassung*)

The North German model is a monistic model in which the mayor is a member of the municipal council. The mayor is elected as the chairman of the municipal council by the municipal council. At the same time, the council also elects someone to function as *Stadtdirektor* (city manager) that is the chief executive of the municipality. The function of *Stadtdirektor* is not a political but a civil service function. The model in which there is both a mayor and a city manager, is known as a model with a '*Doppelspitze*', two-headed, or diarchic leadership. The model was used in North Rhine-Westphalia and Lower Saxony.

The South German model is a dualized model in which the mayor is the most important figure in local politics.³⁰ The mayor is elected directly by municipal citizens and he is both the chief executive and the chairman of the municipal council. He is also the politician representing the municipality externally (Wehling and Kost 2010). The municipal council is directly elected by the people and is the institution that has local legislative capacity. The South German model was the model that was originally used only in Bavaria and Baden-Württemberg.

30 After the reform process, although it is generally seen as a move towards the South German mode, we still see notable differences. For instance, Rhineland-Palatine has opted for mayoral elections without dualisation, in effect making the mayor even more important.

The Magistrate model can be placed in between the North and South German models. It is a model in which the mayor has to share his powers with the aldermen. Together, they are known as the Magistrate. The mayor and the Magistrate are elected by the municipal council, but once they are elected into one of these functions, they cannot be a part of the council anymore. This model was used in Hessen, Schleswig-Holstein, and Bremerhaven.

Finally, there was the Mayoral model, in which the mayor was quite powerful. In this sense, it resembled the South German model. However, in contrast to this model the mayor would be elected by the council, as in the North German model. The model was used in Rhineland-Palatine, Saarland, and the rural-municipalities in Schleswig-Holstein (Gabriel and Holtmann 2005).

After the reunification of Germany, the new, formerly East German *Länder*, that entered the German Federal Republic were free to choose their own way to organize their subnational government within the bounds of the Basic Law. They used this freedom to opt, en masse, for the South German model, which had many elements of direct democracy as well as direct mayoral elections. The choices of East German *Länder* influenced West German *Länder* in their decisions, as will be shown in this Chapter. Because of the institutional choices of the new *Länder* and the reforms in the old *Länder*, German authors now speak of the victory march of the South German model. In a relatively short period of three years most of the federal states moved towards the South German model (Haus 2005; Holtkamp 2005; Wollmann 2008).

4.2.2 *The reform process: introducing direct mayoral elections in German Länder*

Hessen as a first mover

In Hessen, as in many *Länder*, there was some debate in the 1980s about democratic reforms such as the introduction of direct mayoral elections. These debates were not particularly fierce debates and took place without much media attention and pressure on politicians. There was a Magistrate model in place in Hessen. In formal practice, a Magistrate model means that the mayor does not have many attributed powers. The mayor decides on the composition of the task-portfolios of the Magistrate. After this decision, he is not allowed to provide additional instructions to the aldermen, nor can aldermen make dissenting opinions in the Magistrate known, once a decision has been made. Informally though, the mayor had an important voice in the decision making processes of the Magistrate (Dressler 2009).

Hessen is a *Land* with over 6 million inhabitants and the average municipality size is over 14.000 inhabitants (Van der Kolk and Vetter 2004: 7). It can be argued that Hessen is the German *Land* that resembles the Netherlands closest in administrative culture and praxis (Schaap, Sluis et al. 2003). Since its creation, Hessen has been led by CDU and SPD, with both parties regularly changing the lead. At the time of the reform process in Hessen, the CDU (47 seats based on 42,1% of the votes) was leading a coalition with the FDP (9 seats). Opinion polls were favorable towards direct mayoral elections at that time. This led Walter Wallmann, the

Prime Minister of Hessen (and a former mayor of Frankfurt), to consider democratic reforms as a solution to the lagging popularity of his CDU. In first instance, the CDU was not really excited about the proposal, but Wallmann personally decided to put the reform on the political agenda anyway (von Arnim 2010). Wallmann knew, based upon opinion polls, that the directly elected mayor could count on much support amongst the electorate (Wehling 2010: 355).

“When Wallmann came with this proposal, it was very surprising. Before that, there had been *no serious debate* [italics, CG] about the matter. That is why the SPD and the *Grünen* saw it as a political ploy” *Respondent Germany*.

In order to change the Constitution of Hessen a simple majority is required in the *Landtag* and a referendum in which the citizens can vote on the proposed amendment. The referendum on direct mayoral elections was also an attempt to win votes in the general election in Hessen (Van der Kolk and Vetter 2004: 13). The SPD in Hessen interpreted the referendum in this fashion and in public they supported the move by Wallmann. Privately, they were not really in favor of the reform. In the parliamentary vote to organize the referendum on the introduction of direct mayoral elections in December 1990 they supported the CDU. This led to a referendum that took place on the 20th of June 1991. In this referendum 82% of the voters supported the proposed introduction of directly elected mayors. At the same time, the attempt of the CDU to use the referendum on the introduction of direct mayoral elections as a political-strategic instrument in order to win the elections did not work. The SPD managed to win the elections and grew from 44 to 46 seats (from 40,2% of the votes to 40,8% of the votes). Because the *Grünen* managed to keep 10 seats and the FDP lost one seat, the logical coalition to follow from this electoral result was a coalition between the SPD and the *Grünen*.

The SPD did not really believe in directly elected mayors. They were quite satisfied with indirect elections. Now, they were in a strange position as the party that had to implement the reform. However, considering that the constitutional amendment was supported so clearly in the referendum, direct mayoral elections had to be implemented. An important objective of the SPD-*Grünen* coalition afterwards was to implement the reform in such a way that the mayor would not become such a dominant figure as was the case in the South German model. They wanted a model in which municipal councils would be as strong as they were before the reform and the mayoral function as similar as possible to the time before the reform. The most important negotiations took place within the coalition. After the constitutional amendment, only a normal majority was required in the *Landtag*. The coalition managed to agree on the specifics and passed a law to implement direct mayoral elections in 1992. The first elections took place in 1993.

The mayor in Hessen after the reform, was a mayor that was not elected at the same time as the council. Organized this way, mayoral elections should not dominate council elections. The mayor would be elected for a period of six years against the council's five years. The

mayor could only be elected if he manages to get more than 50% of the vote, so two rounds were necessary if nobody managed to get such a majority in the first round. A mayor could be removed if 2/3^{ds} of the council voted for removal and after that 25% of the electorate would do so in a referendum as well. Van der Kolk and Vetter note that this has happened in at least six municipalities in Hessen in 2004 (Van der Kolk and Vetter 2004). The mayor in Hessen is the chairman of the council and all committees and also the head of the administrative apparatus. There are aldermen and they are appointed by the mayor and the council. They can argue with the mayor, but the mayor is allowed to give them instructions. Because one does not have to be a party affiliate to candidate oneself for the mayoral position, the number of non-party-affiliated mayors has risen dramatically (Dressler 2009: 25). So has the number of female and more youthful mayors.

After the legislation for directly elected mayors was implemented in 1992, the mayor had a small range of formal powers. But there have been gradual extensions of his power in Hessen. In the first elections after the reform in 1995, the CDU won and became the biggest party in the *Landtag*, but did not manage to form a majority coalition. Only in 1999 did they win enough to become a coalition member again and could the CDU expand the competences of mayors. The feared dominance of mayors has not materialized in Hessen. Because there are often situations of cohabitation, the mayor regularly has to compromise in order to be able to make policy. Or, as it was put in an interview in Germany, “contrary to expectations, this reform has often led to more consensual politics in municipalities.” Direct mayoral elections are firmly in place in Hessen. No serious moves to get rid of direct mayoral elections have taken place in recent years.

Early adopters and new federal states

In Saarland, there had been a CDU-movement to introduce direct mayoral elections since the 1980s. These CDU attempts to introduce direct mayoral elections were continuously blocked by an SPD absolute majority in the *Landtag*. As the SPD had many majorities in municipal councils, the council elected mayor guaranteed that there would be many SPD mayors (Holtkamp 2005: 28). There was a state commission in March 1993 that advised direct mayoral elections to be introduced in Saarland. There was no immediate reaction to this advice by the SPD. The CDU then tried to organize a petition together with the FDP in April 1994. This petition gathered 15000 signatures in several days. Immediately – perhaps with the state elections of October 1994 in mind – the SPD organized a special party gathering to reevaluate their position on the matter. This led to a change in the SPD-position on direct mayoral elections and a vote in favor of directly elected mayors in May 1994.

Rhineland-Palatine introduced direct mayoral elections in 1993, at which point the SPD formed a coalition with the FDP. This introduction was caused, in part, by a request of the SPD to have an enquiry committee look into the possibilities for more direct citizen involvement (Holtkamp 2005: 28). In similar fashion to the case of Saarland, the SPD wanted a stronger

position for the council. but the CDU and FDP managed to block this and force the introduction of direct mayoral introduction at the same time.

In the new federal states, there was a clear wish to get more democracy than was possible during the period of communist rule. Because of this, these federal states oriented themselves towards the Constitution of Baden-Württemberg with its many direct democratic and other electoral provisions for electoral participation, including the directly elected mayor. The situation in these new states was different from the situation in the old states. For the new states the reform moment provided the opportunity of a relatively clean start. There was no clear balance of power in place, which made reform easier to implement. In any case, Brandenburg in 1993, Saxony in 1994, Saxony-Anhalt in 1994, and Thuringia in 1994 decided to introduce direct mayoral elections (Wollmann 2001). Of these *Länder*, Brandenburg was least influenced by the South German model. Even so, many elements from the South German model were copied. The fact that Brandenburg initially made a smaller move towards the South German model can be explained by coalition negotiations in which the SPD in Brandenburg was a coalition party that preferred not to introduce direct mayoral elections (Holtkamp 2005: 28).

North Rhine-Westphalia, an unwilling reformer

North-Rhine Westphalia was a prominent example of the North German model. The mayor was an honorary chairman of the council, whilst a city manager was in charge of executing the council-decided policies and managing the bureaucracy involved therein. North-Rhine Westphalia was a traditional 'red' state, and the SPD in North Rhine-Westphalia was not inclined to introduce direct mayoral elections. There was a status quo in which the bigger municipalities had SPD mayors and city managers, and smaller municipalities where predominantly CDU-ruled. North Rhine-Westphalia is the state that is closest to the Netherlands geographically and in terms of its number of inhabitants. North Rhine-Westphalia has around 18 million inhabitants, and the average municipal size lies around 45.000 inhabitants (Van der Kolk and Vetter 2004: 7).

In North Rhine-Westphalia, Minister of the Interior Herbert Schnoor (SPD) started a process to consider the introduction of direct mayoral elections, as well as a wider program of local institutional change, in 1988. In 1990, Prime Minister Johannes Rau (SPD – there was an SPD majority in the *Landtag*) added to this that 1991 would be the year of the local democracy. Around this time, also in 1990, the CDU included the wish for direct mayoral elections in its program for the 1990 state elections. In 1991, after the SPD managed to get another majority in the *Landtag*, Rau proposed to end the *Doppelspitze* as part of a larger package of reforms that included direct mayoral elections. It seemed that a clear majority in the Parliament of North Rhine-Westphalia was going to support the proposed reform of local democracy. However, at the state SPD party convention in 1990 in Hagen, the members of the SPD voted against the introduction of direct mayoral elections and the ending of the *Doppelspitze*. Von Armin (2010) cites the president of the federal state at that time, Richard von Weizsäcker, to characterize

this development. Von Weizsäcker saw it as a classic example of party centrals aiming only at political power and deterring citizens to participate. Albert Leifert (CDU) stated that it was a typical SPD-reform blockage. Political scientists speculate that the dominance of the SPD played an important role in the process (Van der Kolk and Vetter 2004: 14 refer to Wollmann 2004).

In North Rhine-Westphalia, there was a large coalition of opposing actors, mainly at the local level. Especially the city managers, who saw their function stop existing and being reallocated to mayors, were an opposing force. At the same time, it must also be noted that the city managers themselves protested against the uneconomical functioning of the *Doppelspitze* model (Bogumil and Jann 2009: 107). An important moment was the call in 1987 of the Cologne city director Kurt Rossa for the *Verschrottung*, demolishing, of this non-functioning model (Kost 2010: 236). Importantly, North Rhine-Westphalia was the federal state where an influential lobby in favor of the South German model was being led by Gerhard Banner (Banner 1984; 1987; 1988; Wollmann 2000; Reichard 2003; Holtkamp 2005: 16; Vetter 2006). Banner claimed that the South German model was more efficient and economical than the North German model.³¹ Banner was the head of the *Kommunale Gemeinschaftsstelle für Verwaltungsvereinfachung* (KGSt, an association of municipalities that is involved in the rethinking of the management of local government) at the time. The KGSt was an influential body in favor of NPM-type reforms mainly, but also saw democratic aspects of the South German model as more efficient than aspects of other models in use at the time (Kommunale Gemeinschaftsstelle für Verwaltungsvereinfachung (KGSt) 1993; Hendriks and Tops 1999). The Ministries of the Interior in different states also showed themselves in favor of the reform (Holtkamp 2007).³²

Because opinion polls in North Rhine-Westphalia showed that over 80% of the citizens supported the introduction of directly elected mayors, the CDU and FDP decided to push forward on the issue. They started to gather signatures, in order to organize an initiative. Only 3000 signatures were needed but they managed to get 50000 very rapidly. In the meantime, Rudolf Scharpings was elected as party chairman of the SPD by the members of the North-Rhine Westphalia SPD in June 1993. It was the first time a chairman was elected in such a fashion. There were elections planned for the municipal level in 1994 and for the state level in 1995. With their own experience in hand and the pressure of the opposition upon them, an SPD-party gathering in Bielefeld was organized sooner than it was originally planned for. In this gathering, the SPD switched position on the directly elected mayor from opposing to supporting reform (von Arnim 2010). Because of this shift, the proposal to introduce directly

31 Banner also continued his efforts in other *Länder*, such as Saxony: Banner, G. (1994). "Der Sächsische Bürgermeister als Ratsvorsitzender und Verwaltungschef." *Sachsenlandkurier* 5(7-8): 225-230.

32 And note that these Ministries are formally in charge of reforms of the institutional politics Haus, M. (2006). *Verwaltungs- und Kommunalpolitik der Länder. Landespolitik in Deutschland. Grundlagen, Strukturen, Arbeitsfelder* H. Schneider and H.-G. Wehling. VS Verlag, Wiesbaden 270-294.

elected mayors was accepted in May 1994. This allowed for an effective introduction with the first following elections in 1999.

The shift of the SPD did not manage to stop a trend of decline for the SPD. Their share of votes continued to decline. Whilst the SPD received 52,1% of the votes in 1985 (with the CDU at 36,5% its main rival), which – also because of the 5% threshold in Parliament – led to a substantial majority in Parliament, in 1990 the share of votes had dropped to ‘only’ 50%, with the CDU winning slightly more votes than the previous election. In 1995, the SPD finally lost its absolute majority (winning 46% of the votes), but a coalition with the *Grünen* provided a possibility for the SPD to remain a part of government.

In this coalition, the SPD was forced to work on the introduction of direct mayoral elections even though there was still no strong support for the institution within the party. It did not help either, that their coalition partner, the *Grünen*, were firmly against direct mayoral elections. So they attempted to introduce direct mayoral elections in such a way as to minimize the actual influence of the mayor. The CDU did not agree with this course, and they knew that their claim for more direct democracy was a position that could count on a lot of popular support, so the CDU proposed many amendments. In the period between 1995 and 1999 there were seven proposed amendments by the CDU. The FDP too, felt that reforms did not go far enough. Debates went on for a while, with parties claiming that other parties were only interested in power politics and the SPD questioning whether or not the CDU understood the principle of representative democracy, but no major changes to direct mayoral elections were passed.

Other lagging Länder

In Lower Saxony, we see similar movements between the parties and the party leadership of the CDU and the SPD. In 1990, the CDU lost its absolute majority in the *Landtag* and a SPD – *Grünen* coalition under the leadership of Gerhard Schröder (later to become Federal Chancellor of Germany) was formed. The leader of the CDU, Christian Wulff (later to become Prime Minister of Lower Saxony and President of the German Republic), made the issue of direct mayoral elections debatable in the autumn of 1993, before the elections that were to take place in 1994. The leadership of the SPD immediately stated their support for reform, even before the official press-conference of the CDU to announce their support for direct mayoral elections (von Arnim 2010). However, there was opposition against this decision within the SPD. Only in March 1995 did the SPD formally acknowledge their new course in a special meeting on the topic. Because Wulff had stated that they would initiate a petition, Schröder had an extra argument against the CDU for the elections of 1996: the CDU would apparently petition something also supported by the SPD.

At the time, the SPD was the single government party in charge. The reform to introduce directly elected mayors was the second part of a bigger reform of the municipal build-up. The proposal only managed to get the necessary majority with one vote in March 1996, and the reform was to take effect in November 1996 (Detjen 2000: 11). There was resistance from the

municipal level, especially from local party bosses and the city managers that were part of the North German model in effect in Lower Saxony. This opposition could not block the reform from taking place, though.

In Schleswig-Holstein, the SPD had a majority in the *Landtag* and formed the government. Whilst the government was not unwilling to introduce direct mayoral elections, the SPD state party congress called the government back on their support for the reform. After this happened, the CDU and FDP quickly started an initiative that gathered many votes in a short amount of time. This created pressure on the SPD and in a new party congress they repealed the former decision and changed position to favor direct mayoral elections. The decision to introduce direct mayoral elections was taken in 1996, with the first elections taking place in 1998 (von Arnim 2010).

Mecklenburg-Pomerania was the last of the ex-communist states to introduce direct mayoral elections in 1999. They did this under the lead of the first 'red-red' government in Germany, a government wherein the SPD formed a coalition with the former communist party of the DDR the PDS (Party of Democratic Socialism). The PDS later changed its name in *Die Linke*. At first, shortly after reunification, the decision was made against this reform because it would compromise the playing room for the newly elected councils too much (Hennecke 2001: 24). The decision to introduce direct mayoral elections in Mecklenburg-Pomerania should be viewed in the light of the movement toward the South German model in the rest of Germany, but the low level of participation in the state also played a role (Schoon 2001: 40).

The reform process aftermath

The aftermath of the introduction of direct mayoral elections in all German *Länder* except for the city-states is uneventful. The reform has been passed and in no single *Land* has the instrument been repealed. There have not been major structural problems with the institution. The problems that were feared by opponents of the reform, that when council and mayor differed in political background deadlock would be the result, did not materialize. At least not in that fashion.

"Direct mayoral elections have changed the political culture precisely in those situations that the mayor and the majority in the municipal council differ. They have to move towards each other in those situations" *Respondent Germany*.

There are different ways to evaluate the reform process. Vetter (2006: 258) notes that there are three evaluative criteria that can be used to evaluate a reform process: 1) changes in the institutional settings; 2) changes in the behavior of citizens; and 3) changes in policy-outcomes. We are not interested in the evaluation of the reforms beyond the changes in the institutional setting in this study. However, because the reforms took place some while back, we are able to state something about the other criteria. When the introduction of directly elected mayors

is related to *Politikverdrossenheit*, in other words, when the reform is seen as an attempt to encourage a more positive attitude of citizens towards politics and to increase the legitimacy of politics (this would fall under criterion 2 of Vetter), we see a mixed picture. If we take voter turnout as an indicator, we see that, generally, the first time direct elections are held there is a boost to the turnout rate, but in later years this drops again. The introduction of direct mayoral elections is no magic cure for all problems in local democracy.

“We still have a problem of *Politikverdrossenheit*, people are tired of elections, the alienation between politicians and citizens has grown. Ever more you can hear people say things like ‘those politicians do what pleases them anyway’. But it is more an issue for the federal government” *Respondent Germany*.

In general (as was indicated in interviews), direct mayoral elections are still valued by citizens. The result has not been intolerable instability, whether in instances of cohabitation or not. Cohabitation can even lead to more consensual politics (which is a result in terms of criterion 3 of Vetter). There are situations in small municipalities, where there was only one mayoral candidate. This could be interpreted as failure. However, contrary to the fears of some, there has always been at least one candidate available. There are differences between *Länder* in terms of satisfaction. For instance, after the first elections in Mecklenburg-Pomerania, the turnout was so low that some asked the question whether the reform should be reversed (Hennecke 2001; Werz 2001). However, overall it is safe to say, at this point in time, that direct mayoral elections are firmly entrenched in the German political structure.

After the reforms, some noteworthy commonalities between the states appeared, but historical influences of the old municipal structures can also be distinguished (Dressler 2009). A general trend is a rising number of unaffiliated mayors as well as female and younger mayors. In larger municipalities this trend is less prominent. In order to get elected in these municipalities, politicians generally need an entire party apparatus to generate enough publicity and support to get elected. To achieve this party-support, a history in the party is required. If we look at the different states: there are not so many female mayors in Baden-Württemberg, but roughly 40-50% of the council members are not affiliated with a political party (Wehling 2010). In Bavaria, first the CDU and then the SPD provide most mayors. Unaffiliated candidates only take the third place – but again, these unaffiliated mayors are more common in smaller municipalities (Fuchs 2010).

Unaffiliated mayors are also more common in Brandenburg (Künzel 2010) and in Hessen, where there are also more women and younger mayors (Dressler 2010). In Lower Saxony the CDU and SPD were still dominant in 2006, but unaffiliated mayors were on the rise (Hoffmann 2010). In general, predicting the winner of the electoral process upfront has become more difficult.

“When I was elected it was a shock for the political establishment. A *Grüne* can be elected here. It was not a shock for the people. They elected me.” *Respondent Germany*.

In North Rhine-Westphalia, there were more non-party affiliated mayors (Kuhlmann 2006: 410). In Saxony, the CDU holds the most mayoral positions (about 190), but individual candidates (151) and electoral groups (as distinguishable from political parties; 102) also hold a considerable number of mayoral positions (Rehfeld-Staudt and Rellecke 2010: 300). Also, mayors see it as a main task to create consensus between the different parties in the municipal councils. In Thuringia, this development of mayors becoming more independent from (their) political parties has been noted and is interpreted as a result of the search for consensus (Franke-Polz 2010: 341).

In the city states, there are no elected mayors (as they would be elected state Prime Ministers) but there were democratic reforms, for instance enabling referendums at the *Bezirk* (municipal area) level (Fraude and Lloyd 2010; Hoffmann and Schwenkner 2010; Scherer 2010).

In the following subsection we will specifically look at different aspects of the introduction of direct mayoral elections in Germany.

4.2.3 The introduction of the directly elected mayor in Germany: formal procedure, political actors, and situational circumstances

In this subsection, the same questions as in the previous Chapter will be used to further analyze the reform process. These questions stem from the analytic framework and regard the formal reform procedure, the actors involved, and the situational circumstances of the reform. In the German case, there is actually a series of reforms taking place. This makes the analysis somewhat different from the introduction of direct mayoral elections in the Dutch case. There are multiple processes going on at the same time and after each other in Germany. These processes did influence one another. This is a reason why the introduction of direct mayoral elections is seen as one reform process.

The formal reform procedure

The formal reform procedure differs in the German *Länder*. In all cases the reform was part of a state constitutional change. Most German *Länder* require only one vote in the State Parliament, which is required to be a unicameral Parliament by the Basic Law. Only Hessen and Bavaria require its citizens to agree in a referendum with each change of the state Constitution. Most other states only require a referendum when the matter at hand is a fundamental change of the Constitution (*Gesamtänderung*). All constitutional reforms require a 2/3rds majority at the state level, except for Hessen, but, as said, in Hessen a referendum is required. Next to these constitutional hurdles, there are also possibilities in some German states that can be used to force an issue onto the political agenda or into the decision making procedure. In all the ‘old’ states that have introduced direct mayoral elections some provision for citizens’ involvement

was in place at the state level. In most cases, this meant citizens' initiatives that could be started either by a number of citizens or by a group of politicians from a State Parliament. As we have seen, in all hesitant states opposition parties have threatened to or actually started to organize a citizens' initiative in order to pressure the ruling party (von Arnim 2010). In Hessen, the state that started the reform movement, the referendum had clear result that could not be ignored. In other states the required signatures for such initiatives and referenda were attained in a short period of time.

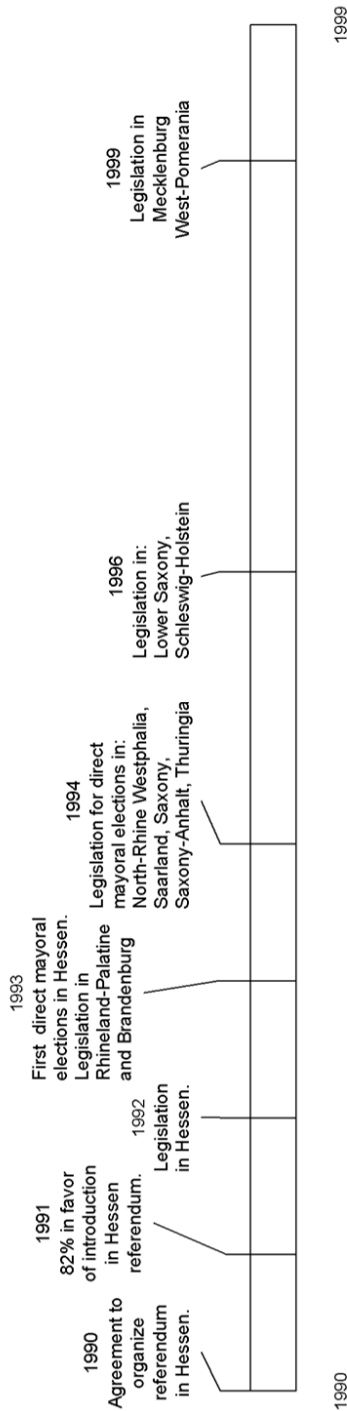
The actors in the reform process

Political parties

The political parties involved in the introduction of direct mayoral elections in Germany are generally the same parties in all *Länder*. Only in the former East-German 'new' *Länder*, a different party is sometimes involved compared to the old *Länder*. This party is the heir to the ruling party during communism, the leftist *Linkspartei.PDS* (Left Party. Party of Democratic Socialism). During the period in which the reforms took place, this party generally managed to get 10 to 15 % of the votes in state elections in former East-Germany. However, the situation in the new *Bundesländer* is less interesting for comparison with the Netherlands than the situation in the old *Bundesländer*, as the former West-German states are more comparable to the Dutch and Austrian cases due to their specific historical circumstances.

In terms of the type of involvement of the political parties, there is a remarkable similarity between the different federal states. In general the SPD and *Bündnis '90/Grünen* are skeptical of, or outright against, the introduction of direct mayoral elections and instead favor council elected mayors. The CDU and FDP are generally in favor of the directly elected mayor. There are two main explanations for the differences between the parties. These explanations have to do with ideology and political considerations. On the one hand, ideology plays a role. The SPD and *Bündnis '90/Grünen* are generally in favor of mayors elected by municipal councils. This could be related to their general political aversion on the election of (strong) leadership figures. Instead, the municipal council election ensures broad support for a normally moderate mayoral figure. The SPD has argued (for instance in North Rhine-Westphalia) that representative democracy is crucial to the German state. Some steering of political parties cannot be escaped and is even a good thing. It could be problematic if citizens could elect people that were unsupported by political parties. The CDU and FDP, in contrast, are generally in favor of direct mayoral elections. An ideological explanation could be that direct elections fit with the liberal heritage of the FDP: let citizens decide for themselves who is a capable leader. Similarly, the emphasis of German Christian-democrats on local communities can be an explanation for the willingness of Christian-democrats in many *Länder* to argue in favor of direct mayoral elections. Furthermore, the South German model is a model that stems from strongly Christian-democratic *Länder*.

Figure 4.2 General timeline for the introduction of direct mayoral elections in Germany



Political-strategic considerations played a role. These considerations take two forms. The first is the general attitude towards the model of direct mayoral elections in terms of its benefits and costs. In terms of these calculations, for instance, the SPD had little to gain from the introduction of direct mayoral elections in North Rhine-Westphalia because they were already dominant in the more prestigious and politically influential larger municipalities, whereas the CDU was dominant in smaller municipalities. However, the second consideration was the extent of political cost or gain in upcoming elections (on all, but mainly state, levels of the federal state) to maintain that starting position against direct mayoral elections. It is in this area that most parties began to change position. In Hessen, blocking the reform would mean going against an 82% majority among citizens. The SPD thought it would cost them electorally, even before the referendum, and decided to support the reform proposal. Instead, they attempted to retain as much power as possible for municipal councils. In North Rhine-Westphalia, there were threats to organize a *Volksbegehren* by the CDU and FDP. This required a significant number of signatures by citizens. Once that number would be reached the *Landtag* would have to decide on the matter. If the decision of the electorate would not be respected, a *Volksentscheid* would follow automatically. This *Volksbegehren* initially required 3000 signatures but received 50000 signatures in its initial phase, emphasizing the popularity of the theme and forcing the SPD to change position on the topic (von Arnim 2010). Therefore, several authors have concluded that the reforms are part of a wave in which the political parties in the states might have wanted to, but simply could not stop the tide of history (Schoon 2001; von Arnim 2010).

Occasionally, there are clear rifts between party leadership and party members. This was the case in North Rhine-Westphalia and Lower Saxony, where party members needed to be convinced by party leadership. For Wehling (2010: 356), the changes of the SPD party position on direct mayoral elections in North Rhine-Westphalia are classic examples of shifts made on the base of power-political considerations. This seems logical: party leadership, being in office or close to power, will be more interested in the power-outcomes of certain policy choices than the members of a party. The members belong to a party because they strive to achieve their political ideals.

Von Armin also questions the sincerity of the motives of parties because of the unsystematic fashion in which different governments have introduced directly elected mayors (von Arnim 2010). Systemically introducing a reform is what really makes a reform work, but little attention has been given to systemic aspects. The proponents of the reform did not threaten to introduce the more systemic aspects with renewed initiatives and petitions. This could be because they believed that initiatives did not really stand any chance of getting enough support, or because they did not care all that much.

Individual persons

In such a series of democratic reforms, many individuals play an important role. Two of these individuals stand out as the ones that really got the process going and, in combination with the

other factors, led to the reform wave of introductions of direct mayoral elections. These figures were Walter Wallmann, the CDU Prime Minister of Hessen, and Gerhard Banner of the KGSt (more will be said about the role of the KGSt in German public administration in the following subsection).

Walter Wallmann was the person that took initiative, in public, to organize a referendum on direct mayoral elections in Hessen. This action has been interpreted as a strategic move to stop his CDU from losing the elections. By introducing a politically popular measure shortly before the elections, knowing that the SPD was principally against these types of elections, he hoped to lure voters towards the CDU. This might be true, but there are numerous other issues that could have been used for such a ploy. Up until that point in time, the functioning of the different models of local administration was generally accepted by citizens and political parties. This first move was thus a crucial move for the introduction of direct mayoral elections in all German states.

Political leaders were dominant actors within political parties in the different reform processes. Political leaders are looked at for leadership, but there has to be some room for political leadership. In most cases, the leaders of the SPD and CDU, as can be illustrated by the example of Wallmann but also the dealings between Schröder and Wulff in Lower Saxony, had a history of plotting their own course (von Arnim 2010). In line with this history, they decided to simply proceed with the introduction of directly elected mayors.

Gerhard Banner has played a somewhat different role, but has also been recognized as influential by different German researchers (Haus 2005; Holtkamp 2005). As a scientist, he managed to argue convincingly in favor of the different gains that could be had from introducing direct mayoral elections. These gains would not only be legitimacy gains, but also include superior economic output of directly elected mayors compared to other German mayoral arrangements. This made the introduction of direct mayoral elections acceptable on other grounds than those of democratic legitimacy.

Other actors

There was a variety of other actors involved in the introduction of direct mayoral elections. One group of actors was the collective of municipalities that did not have direct mayoral elections. Amongst local democracies, especially the councils were against the introduction of direct mayoral elections. These councils saw a presidential mayor as a threat to their own authority and position in the municipal institutional setting. In North-Rhine Westphalia, the city managers protested for this very reason: their function would not return in the sense it existed in before. In this sense, attempts to oppose the reform also followed from the institutional position one was in. Unfortunately for those at the municipal level opposing the reforms, however, the reform decision was taken at the state level by state level politicians, for whom other considerations, such as the effects on state elections, played a vital role (Holtkamp 2005:

19). Thus, despite local critique, state legislatures carried on with the introduction of direct mayoral elections.

The KGSt (*Kommunale Gemeinschaftsstelle für Verwaltungsmanagement*) is an organization that works on the base of membership. Most (larger) German municipalities, some Austrian municipalities, and some counties (*Kreise*) are members of the organization. It is particularly interested in matters of the management and organization of municipalities. As the KGSt is financed by these different members and works together with these municipalities, the opinions of the KGSt are generally quite influential. It is not just a lobby group of sorts, it is an organization by and for municipalities.³³ The KGSt argued in favor of reform.

The general public

Important in the case of the German elected mayor, was the fact that citizens were demanding more rights to participate *and* had possibilities to carry these demands beyond the level of opinion polling. At the same time, opposition parties gathered around the issue and attempted to organize initiatives and petitions to introduce more the directly elected mayor. The 82% referendum result in Hessen (Holtkamp 2005; von Arnim 2010), the speed in collecting required signatures in other states, and the opinion polls that were overwhelmingly in favor of democratic reforms, made it clear to many politicians that there was no stopping the reform movement. They reasoned that attempts to stop the reform could lead to severe losses in elections. Many Constitutions turned out to differ to a large extent from the espoused will of the people in these opinion polls. This caused the legitimacy of these Constitutions to be challenged (von Arnim 2010). Especially in Lower Saxony and North Rhine-Westphalia, there was a growing sense of urgency that they did not want to be the last state to introduce directly elected mayors. There were possibilities in all the states to ask citizens about their views on matters, in referendums or other direct democratic instruments, and it became clear that (opposition) parties were willing to use these instruments to break through the barriers blocking reform (von Arnim 2010).

Situational circumstances

There are two events that serve as the situational circumstances that influenced the reform processes in different German states. Several authors, such as Holtkamp (2005), note the fact that the new federal states that joined the federation after the reunification of Germany were orienting themselves towards the Baden-Württemberg Constitution with more direct citizen involvement. The citizens of the former DDR did not have much experience with (direct) democracy, but introduced these reforms nonetheless. After this trend became clear, it could

33 For more on the relationship between political science, administrative science, and political practice see also: Bogumil, J. (2005). "On the Relationship between Political Science and Administrative Science in Germany." *Public Administration* 85(3): 669-684.

no longer be argued that the citizens of the old federal states, who had more democratic experience, could not be trusted with these more direct forms of citizen involvement. To put it bluntly: if the new states, with citizens that had only lived under a totalitarian regime, allowed their citizens these rights, how could one withhold these rights from the citizens of the old states? (Holtkamp 2005: 18) However, even before the new states ratified their Constitutions that were based upon citizen involvement their movement had influence.

“The reunification did not only play a role because of the orientation towards the South German model, but also because of the slogan in East Germany ‘*Wir sind das Volk*’, and this without the mediation of politicians. This was an idea that stuck in the heads of people, also in the case of Wallmann. You can see the reform process [in Hessen, CG] start before the new federal states started with their processes” *Respondent Germany*.

As it happens, political parties in the old states had recently gathered some experience in allowing members of political parties participate in setting the course for these parties (letting members vote on policy goals etc.). There was thus already *some* experience with more direct types of arrangements. The second situational circumstance that helped the reform process, was the referendum result in Hessen. The fact that the referendum required for the constitutional change in Hessen led to such an overwhelming result in favor of direct mayoral elections made other positions in similar debates quite untenable. The legitimacy of the other models was brought into question because of the result in Hessen. Furthermore, opinion polls showed support for direct mayoral elections in other states to be of equal size as in Hessen’s referendum.

4.2.4 Preliminary conclusions

The introduction of direct mayoral elections in various German *Länder* can be regarded as a reform wave (Wollmann 2000). The reform wave can be explained with the help of the particular set of circumstances that was present at that time. First there are two commonalities: in all states that introduced the reform, the introduction was relatively easy from a formal procedural perspective. There were relatively few boundaries and veto players in place. A single 2/3rds majority in a single voting round sufficed in most states. Only some states required an additional referendum. The referendum is sometimes seen as an extra hurdle for reform (an extra veto player), but in the case of the directly elected mayor there were overwhelming majorities of citizens in favor of the reform. The referendum did not function as a veto player in these instances, but functioned as a force for change. This was not only the case for the states where a referendum was required, but also for *Länder* that had not implemented the reform yet. The second noteworthy fact is that the political parties held similar positions in the different states. Due to their ideological positions, as well as the power balance at the time,

these positions did not differ all that much. In general, the SPD and *Bündnis '90/die Grünen* were against the reform, whereas CDU and FDP were in favor of the reform.

When there was a referendum in Hessen, the SPD made a political calculation and supported the reform. The reform proposal was seen as a political strategy of the CDU. Opinion polls already showed large support for the reform, and with the two largest parties now supporting the reform an 82% vote in favor was managed. After this result, the new federal states also oriented themselves on the South German model, and there was encouragement from the KGSt to introduce these reforms. This led to differing reform processes, but more than once the threat of organizing citizens' initiatives by opposition parties played an important role. This led parties opposing direct mayoral elections to quit their stalling tactics and vote in favor of the introduction of direct mayoral elections. If possible, these parties would try to get an arrangement that differed as little as possible from their preferred option. One state after another thus introduced direct mayoral elections. Blocking the reform, political parties feared, would lead to electoral punishment.

4.3 REFERENDUMS IN THE GERMAN LÄNDER

4.3.1 Introduction and background to the reform process

Largely simultaneous with the process of the introduction of direct mayoral elections, a process to introduce referendum possibilities at the subnational level in Germany took place. With respect to these reforms, we have to distinguish referendum possibilities at the state level and at the municipal level. At the state level we can distinguish the *Volksbegehren* (initiative for a referendum), the *Volksinitiative* (petition to place an item on the agenda) and the *Volksentscheid* (deciding referendum). There were several states that allowed for binding referendums at the state level, such as in the case of constitutional change for instance, Hessen and Bavaria can serve as examples here. At the municipal level the *Bürgerbegehren* and *Bürgerentscheid* are distinguished. At the municipal level, there were initially less states that provided referendum possibilities to its citizens than at the *Länder* level. Again, Baden-Württemberg can serve as the most striking example of a state with both these local referendum possibilities already in place in the 1950s (Wollmann 2000: 929).

The only old states that introduced a referendum possibility at the state level in the 1990s, were Schleswig-Holstein, Lower Saxony, and the city-states. These city-states have a special position in the German system because these are both *Länder* and municipalities at the same time - as was shown in Figure 4.1 (Rehmet 2002: 107/108). In the reform process to introduce state-level referendum possibilities, the first mover was Schleswig-Holstein. The same goes for local referendums, where the new federal states and the other old states (except for Baden-Württemberg, which already had this provision) followed Schleswig-Holstein (Vetter 2006).

4.3.2 The reform process: introducing deciding referendums in German Länder

Schleswig-Holsteins crisis and reform

In the beginning of the 1990s, before the introduction of direct mayoral elections in Hessen, Schleswig-Holstein was the first state that made a move to introduce the referendum at the state and municipal level (Van der Kolk & Vettel 2004). The reform in Schleswig-Holstein was the starting point for the reforms that would follow in other *Länder*. The cause of the reforms in Schleswig-Holstein is widely acknowledged to be the 'Barschel Affair' (Bogumil and Jann 2009; Vetter 2009).

Uwe Barschel was the CDU Prime Minister of the state Schleswig-Holstein in the 1980s. After the elections of 1987, it was revealed by the media that Barschel spied on his political opponent and plotted actively against him. This opponent was the SPD candidate, Björn Engholm.³⁴ The press had uncovered these illegal actions, but Barschel denied the allegations. Several days later, Barschel died under mysterious circumstances in a hotel in Switzerland. It is not clear whether it was a suicide or a murder case. The state elections of September 1987 (won by the CDU) had to be redone in May 1988 and in these elections the SPD won an absolute majority. It was the first time in 38 years that the CDU was not part of the governing coalition of the *Landtag* of Schleswig-Holstein.

The Barschel Affair was a political scandal that was inclusive in the sense that the affair had a negative effect on the entire political sphere in Schleswig-Holstein. The affair led to demands for more transparency of politics, openness, and citizen influence (Magin, Eder et al. 2008: 346). To deal with these demands, the SPD first organized a commission to research the Barschel Affair. Later the SPD appointed a commission led by Lianne Paulina-Mürl of the SPD (the *Enquete-Kommission „Verfassungs- und Parlamentsreform“*) to propose changes to the political system in Schleswig-Holstein. Reforms were seen as necessary for the public to regain faith in the political system of the state. The commission proposed the introduction of more direct democratic elements in Schleswig-Holstein in her final report of February 1989. The results of the commission were sent to the special parliamentary commission that would debate the proposals. The SPD fully accepted the proposals together with the SWW (the South-Schleswig voter federation, a local party) and introduced them all 25, but the CDU had other ideas. This led to debates that finally led to reforms that were supported by all parties. The reforms were voted on by the *Landtag* on the 30th of May 1990. The *Landtag* voted unanimously for the introduction of referendum possibilities at the state and the municipal level (Bull 2003).

34 It later surfaced that Engholm did not manage to keep his hands clean during the Barschel Affair either, which led to the Schubladen Affair.

Reforms in other states

After Schleswig-Holstein, we may first note that all the new federal states adopted the South German model, including local referendums. The initial move in this direction was made by what was then still the DDR on the 17th of May 1990. In order to preserve some of the peaceful reform spirit that had liberated East-Germany a year before (Holtkamp 2007). However, after this initial reform, the different states had to adopt new state Constitutions when they became part of the federal republic. So after this general move to introduce local referendums, the different states had to implement reforms on the state level once again. All the new states subsequently did so. Brandenburg did so in 1993, Mecklenburg-West Pomerania, Saxony, Saxony-Anhalt, and Thuringia all did so in 1994. These moves are to be seen in light of the shift from communism to democratic-capitalism and the preference at the time to allow for many civic liberties, including the freedom to vent one's views on a political issue.

Hessen was the second old state that introduced the possibility of local referendums in 1992. According to Dressler, this happened quasi under the heading 'against political discontent: from party democracy towards citizen democracy' (Dressler 2010: 177). In this same year, Hessen also decided on direct mayoral elections. Rhineland-Palatine, a state with traditionally more elements of direct democracy in place, introduced local referendums in 1993. North Rhine-Westphalia did so in 1994, Bavaria in 1995 – like Hessen, Bavaria needs a referendum to change the Constitution (*Volksentscheid*) (Haus 2006: 285; Holtkamp 2007; Magin, Eder et al. 2008; Bogumil and Jann 2009: 108). In Bavaria, the referendum was based on an initiative by the organization *Mehr Demokratie* (More Democracy). The *Mehr Demokratie* proposal differed from the CSU-designed proposal that came out of the State Parliament, but was supported by the opposition parties (Fuchs 2010; Wehling and Kost 2010: 14). Lower Saxony followed in 1996, Saarland was a bit of a laggard in 1997, as was Hamburg in 1998 and another city-state, Bremen, that also needed the threat of a referendum for the reform to be passed, but did so in 1994 (Magin, Eder et al. 2008; Bogumil and Jann 2009: 108).

The quest for referendum possibilities went somewhat differently at the state level. We see a similar pattern to the introduction of local referendums, but with one important difference, namely that most states already had a provision for state level referendums (be it different types of referendums, some obliged constitutional referendums, but others initiatives). Schleswig-Holstein was the first mover in 1990, Saxony, Saxony-Anhalt, and Brandenburg followed in 1992, as did Mecklenburg-Pomerania, Lower Saxony, and Thuringia in 1993, ending with Hamburg in 1996 (Magin, Eder et al. 2008: 346).³⁵

35 Adding to this, it can be mentioned that there have been subsequent changes by states to relax the demands placed on valid referendums: Berlin made changes in 1995, Hamburg in 1994 and 1997, Hessen in 2001, Rhineland-Palatine in 2000, and Saxony-Anhalt in 1997 (Magin, R., C. Eder and A. Vatter (2008). *Direkte Demokratie in den Bundesländern. Ein Vergleich der Institutionen und Anwendungsmuster. Die Politik der Bundesländer. Staatstätigkeit im Vergleich*. A. Hildebrandt and F. Wolf. Wiesbaden, VS Verlag.

In Lower Saxony, the only (non city-state) *Land* without direct democratic elements at the state level the reform was introduced under the leadership of Gerhard Schröder and a SPD-*Bündis '90/die Grünen* coalition. Although there was talk of a necessity to reform, because Lower Saxony was now the only old state without direct democratic possibilities and because of the prospect of reunification, it was the small opposition party FDP that reminded administration that their Constitution at the time was always meant as a preliminary Constitution (Jung 1993). This led to a reform process in Lower Saxony.

A 2/3rds majority was required. This required at least the CDU to vote along with the coalition parties. A compromise on a new state Constitution was made in order to get this majority. In order to form this compromise, a special committee (*Sonderausschuß*) of the *Landtag* was created. The thought was that a special committee would suffice because politicians in Lower Saxony could work with the new constitution of Schleswig-Holstein. The politicians also figured that this would be a quicker process than appointing a normal commission. An immediate consensus was that direct democratic elements (*Volksinitiativen*, *Volksbegehren*, *Volksentscheid*) had to be introduced. The next question regarded the exact form. This took a while to agree upon. In the final vote on the 13th of May 1993, of the 150 votes cast there were 149 in favor of the new Constitution and 1 vote against it. The introduction of different direct democratic elements was part of a complete revision of the Constitution of Lower Saxony. The entire Constitution was carefully reconsidered because of the reunification of Germany.

The reform process aftermath

In terms of local and state Constitutions, several authors have noted a distinct move towards the integration or equalization of German Constitutions (Haus 2005; Holtkamp 2008; Wehling 2010). In terms of the local Constitutions, this is explained as a move towards the South German model (*Siegeszug der süddeutschen Verfassung*). This move has been so decisive, that in many cases the original South German states of Bavaria and Baden-Württemberg have been surpassed by other states in the extent to which citizens have real possibilities to participate (Magin, Eder et al. 2008; Wehling 2010). Baden-Württemberg remains quite unchanged and thus often the quorums for validity of referendum results are relatively stringent (Wehling 2010). In terms of referendum possibilities at the state level: most states already had these to begin with. It was thus not a case of a move towards one or the other constitutional model. The few states that did not have referendum provisions (including the new states), moved towards more direct democratic possibilities with the introduction of state level referendums.

In terms of the systematical consequences of these reforms, only limited evidence is published. For instance, on the culture of referendums: if one takes into account the number of referendums, the number of municipalities, and the number of years referendums have been possible, this would calculate into each municipality holding a referendum once every two hundred years (Wollmann 2002: 79). At the same time, some indications exist for an increasing tendency to use referendums in Bavaria and North Rhine-Westphalia. Kuhlmann agrees, she

also notes very limited use of local referendums (Kuhlmann 2006). Holtkamp (2007) shows that there are large differences between the states of the federal republic in terms of the quorums necessary in order to validate an initiative or referendum. The usage of the instruments seems correlated to these quorums. The lower the quorums are, the higher the usage of local referendums is. Bavaria is a state where relatively much use has been made of the introduced referendum possibilities at the local level. So much use was made of the possibilities, that the 1995 introduction was followed by a 1999 reform that raised the quorums for referendums. The effects of the reform to introduce referendums have not been as detrimental as the CSU feared at the time. Instead of a general instrument of left-leaning political parties it has more often been used to block big projects (and) as an instrument of fiscal discipline (Fuchs 2010: 55).³⁶ In Schleswig-Holstein, referendums have been used more often in smaller municipalities. High quorums are needed to organize referendums and these are easier to attain in smaller municipalities (Kellmann 2010: 334). Apparently, it is easier to mobilize a big part of a small community than a big part of a big community. In Thuringia (as in other states), therefore, the quorums were lowered later on (Franke-Polz 2010: 345).

Holtkamp notes that fear of citizen involvement at the local level has caused many factions in municipal councils to become more willing to compromise on issues where they would previously not have compromised (Holtkamp 2007). In North Rhine-Westphalia, almost all the initiatives that were formed, have been copied almost literally by local parties, so that referendums on the same topic as initiatives have become very rare (Holtkamp 2007). In Hessen, the influence of the introduction of referendum possibilities was higher than that of direct mayoral elections because citizens turned out to be interested in specific topics that could now be dealt with by referendum (Dressler 2010: 179). In Lower Saxony, the initiative at the municipal level is often used develop proposals contrary to the wishes of the biggest party, or against a council majority (Hoffmann 2010: 224).

4.3.3 The introduction of referendums at the Länder level: formal procedure, political actors, and situational circumstances

To a large extent, the process of the introduction of referendums is similar to the introduction of directly elected mayors. The series of reforms we have seen in Germany has been typified as a reform wave precisely because so many reforms were taking place in the same time period. These were both democratic reforms as well as more managerial reforms due to the late implementation of the New Public Management in Germany. In the case of referendums at the local level, it helped considerably that the reforms were actually less controversial than the

36 This fiscal discipline is something that Ted van de Wijdeven and I have also noted in research on participation projects at the local level in the Netherlands. As one interviewee then put it "they treat the money as if it's their own". See: Geurtz, C. and T. Van de Wijdeven (2010). "Making Citizen Participation Work: The Challenging Search for New Forms of Local Democracy in The Netherlands." *Local Government Studies* 36(4): 531-549.

introduction of direct mayoral elections. This is different for referendums at the national level, where politicians are dealing with a highly controversial issue (Holtkamp 2007; Kuhlmann, Bogumil et al. 2008).

The formal reform procedure

The formal reform procedure is the same as the one for the introduction of directly elected mayors that was discussed in subsection 4.2.3. In most *Länder* 2/3rds majorities were required and in Hessen and Bavaria a referendum would be necessary for a constitutional change (in Hessen combined with a normal majority in Parliament). On the state level, there were only two old states that did not have a referendum possibility. No referendums were required to introduce these possibilities.

The actors in the reform process

Political parties

With respect to the introduction of referendum possibilities, there were no standard role divisions between political parties. For instance, in the first state to reform, Schleswig-Holstein, it was basically up to the SPD to develop a proposal to introduce legislation for more direct democracy, as they held an absolute majority in the *Landtag*. In that instance, it was the CDU that wanted different proposals than those that were originally developed. After negotiations, these two parties managed to come to an agreement. In the case of Hessen, by contrast, the CDU was already demanding direct democracy at the local level in the 1950s (Dressler 2010). The only other old state to introduce direct democratic elements at the state level was Lower Saxony. In this state the lead was taken by the SPD and *Bündnis '90/die Grünen*, but it was a combined process as the cooperation of the CDU was required. As no direct democratic instruments were present at the time, there were no threats to use these instruments. Instead, it was a creation of representatives in Parliament with a consensual result.

As regards the reform processes to introduce referendum possibilities at the local level, these were relatively easy. The political parties in almost all states only made instruments available at the local level that had already been available at the state level for a long time. Furthermore, these reforms did not cost the politicians themselves. Politicians at the state-level were deciding on something to be implemented locally, which had little consequence for state politics (Haus 2005; Holtkamp 2007). Haus (2006: 286) notes that German politicians did not perceive the introduction of possibilities for local referendums as being especially relevant (*keine sonderlinge Relevanz*) for local politics.

Individual persons

With respect to the introduction of more direct democratic elements in the federal states, there have not been particular individuals that stand out in the reform processes (either block-

ing the reforms or helping the reforms to get passed). The only individual that truly stands out in the process is Uwe Barschel, and he does so in a negative sense. With his actions as prime minister of Schleswig-Holstein, he managed to damage politics in that federal state to such an extent that, together of course with other factors, the only option for politicians in Schleswig-Holstein was to drastically reform the Constitution of the state.

Other actors

In Schleswig-Holstein there was an important role for the commission led by Lianne Paulina-Mürl of the SPD to arrive at proposals to change the Constitution. In Lower Saxony, the debates on the Constitution also took place in a special committee of the *Landtag* instead of a commission – as it was thought that the recent developments in Schleswig-Holstein could be used for the development of their own Constitution. In the reforms, with regard to local democracy, the organization *Mehr Demokratie* played a role as a lobbyist for reforms, for instance, by researching democratic practices to support arguments for more democracy (Rehmet and Mittendorf 2008). *Mehr Demokratie* also played a role in Bremen, attempting to change electoral laws by a *Volksabstimmung* (Scherer 2010: 135). *Mehr Demokratie* did this in 1998 in Hamburg as well, in order to introduce *Bürgerbegehren* (a similar instrument to the *Volksbegehren* that was mentioned earlier, but at a lower level) at the *Bezirk* level and succeeded (Fraude and Lloyd 2010).

The general public

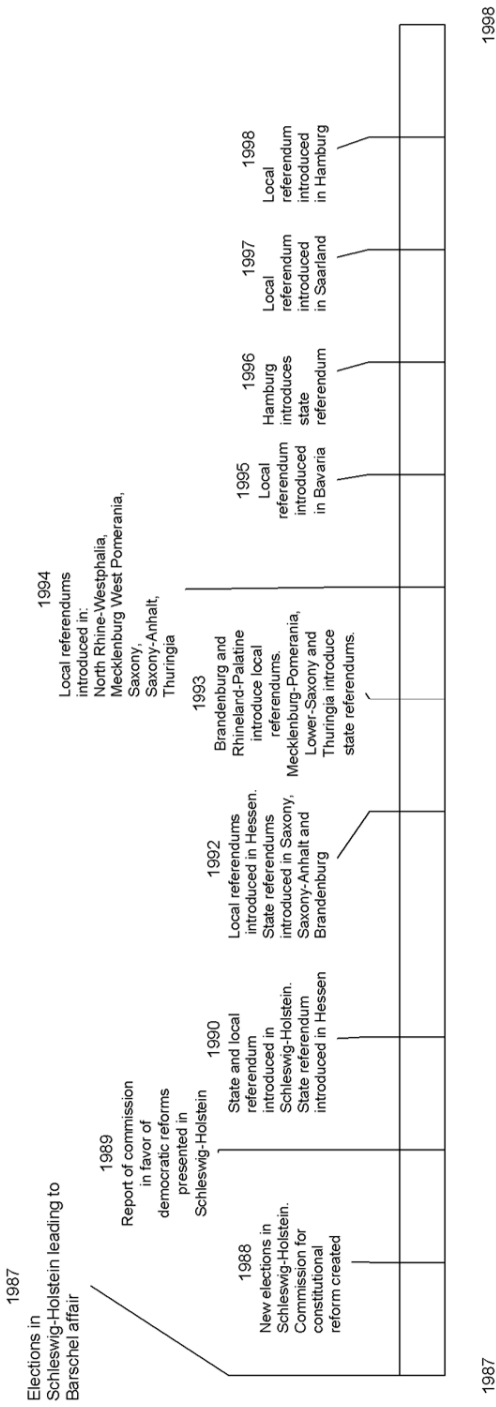
The general public played a role in both reform cases, but not necessarily in a prominent fashion. As these reforms took place in the time when there was talk of *Politikverdrossenheit* and *Parteienverdrossenheit* it was clear that there was some general political discontent. What mattered much more was the shock the Barschel-affair had in Schleswig-Holstein in first instance, but also in the rest of Germany. Citizens were clearly unhappy that something like this could happen in their state and something had to be done to let these citizens regain their confidence in the politics in their state.

After the reform in Schleswig-Holstein had taken place, politicians in Lower Saxony were quite aware that they were the only state without this direct democratic instruments at the state level. Not to introduce these referendums would be hard to explain to the public, although the public could not force the issue on the agenda with the help of initiatives.

Situational circumstances

Two situational circumstances dominated the introduction of referendums at the state level. The first was the Barschel-affair, which caused political shockwaves in Schleswig-Holstein and was the main driver for the reform of the Constitution in Schleswig-Holstein. This Constitution included more direct citizen involvement in order to regain trust and credibility. The second event was the reunification of Germany, which was more pertinent in the case of Lower Sax-

Figure 4.3 General timeline for the introduction of referendums in Germany



only than it was in Schleswig-Holstein, as the reform process in Lower Saxony started after the reunification. The reform in Lower Saxony was influenced by reunification in two ways. It drew attention to the 'temporary' status of the Constitution that was in place at the time. Secondly, with new states orienting themselves on the South German states with much direct democratic instruments in place and Schleswig-Holstein also implementing direct democratic as all but last state, Lower Saxony was now the only old state without such direct democratic provisions and possibly even the only state in all of Germany after the entrance of the new states into the federation.

4.3.4 Preliminary conclusions

The introduction of referendum possibilities in different states in Germany was a combined process. Most old German states already had a referendum possibility at the state level. Those that did not, introduced these possibilities in the 1990s. The states that did have these referendum possibilities, as well as those that did not, did proceed with the introduction of referendum possibilities at the local level.

The main driver of the reforms at the state level was the Barschel-affair. This affair caused a thorough revision of the state Constitution of Schleswig-Holstein, and this led to pressure on those states that did not yet have this referendum possibility. No state wanted to be the only state to 'withhold' rights from their citizens. The fact that the new federal states also opted for these instruments of direct democracy helped, as did the fact that the formal reform process was not overly demanding. In any case, the introduction of referendums was less controversial than the introduction of direct mayoral elections.

4.4 COMPARING THE GERMAN REFORM CASES

By comparing these two German reform processes, we can distinguish some characteristics of German democratic reform processes. These characteristics will be more structural than when one delves into only one case, but not necessarily the explanation for a larger population of reforms in Germany. For instance, the cases researched in this Chapter are all relatively successful reform processes, as the reforms were all passed. We can contrast this with other German experiences, think only of all the literature on the joint-decision trap (*Politikverflechtungsfalle*) that has been written about the difficulty of reforming the German federal Constitution (Scharpf 2006; 2008). With this preliminary comparative analysis, question four of the analytic framework that deals with the commonalities and differences between the reform cases will be answered. Like the previous Chapter, the basis for this comparative analysis will be the questions regarding the formal procedures, the actors, and the situational circumstances during the reforms.

4.4.1 The formal reform procedures in Germany

State and municipal Constitutions are relatively easy to change in Germany. Occasionally these reforms required a referendum such as in Hessen and Bavaria, but most of the time a qualified two-thirds majority in one parliamentary House, and sometimes only a simple majority, is required (Holtkamp 2007). Furthermore, all these processes were reform processes that could be dealt with in one parliamentary voting-round: either one vote in the respective *Landtag*, or one vote in the *Landtag* combined with a referendum.

Next to the relative ease of the introduction processes, there was also the availability in most states of the instruments of *Volksbegehren*, *Volksbefragung* and *Volksinitiative*. Although specific rules for organizing these plebiscites vary between states, in general, these plebiscites could be initiated by relatively small (opposition) groups of politicians in each *Landtag*, a group of citizens, or a combination of citizens and politicians. This allowed citizens and political parties to organize referendums on the topic, which was used as an instrument to pressure the unwilling parties in the direction of reform.

4.4.2 The actors in reform processes in Germany

Generally speaking, political actors in the reform processes researched in Germany were not particularly afraid of reforming democracy. We have seen in the case descriptions that there were exceptions to the rule, but generally the CDU and FDP seemed more supportive of the introduction of direct mayoral elections whereas the SPD and *Bündnis '90/die Grünen* seemed more skeptical of direct mayoral elections and more supportive of the existing council arrangement. In the two cases of the introduction of state referendums, the SPD was the (main) ruling party that had to supervise the introduction. However, support of the CDU was needed, so there had to be negotiated. These two cases had their own particular dynamic to them that provides some lessons for these types of processes in general. Especially the case of Lower Saxony is instructive in this respect. Political parties seemed to reason that a democratic reform is not to be stopped if one is the only state that has not implemented such a reform. Under those circumstances, arguing against a reform is judged to be a politically unattractive option by politicians.

Political parties in the German cases valued their ideological goals against the opportunity costs of holding on to these goals. These opportunity costs came in two forms. The first regards the longer term effects of the reform. It takes into account the potential for electoral gain or loss as a result of the new democratic instrument. For instance: will we get structurally more or less mayors after the reform? And: how will the introduction of a state referendum effect the structural power position of political parties? The second form regards the more immediate electoral effects for the party, specifically winning or losing seats at the next elections at the state level as a result of supporting or blocking such a reform.

Vetter, partially overlapping with this argument, follows Weaver and Rockman who state that massive failure in governance, attempts to consolidate power, or the fear of losing power

are the three main factors that stimulate institutional change (Vetter 2009: 131). Added to this, Haus notes that subnational politics are not the hottest political topic in Germany (Haus 2006: 291). In the reform cases discussed in this Chapter – except for the introduction of state referendums – the state politicians were deciding on the fate of municipal politicians. This is easier than deciding on one's own fate.

What also helped the reformers in the German cases, was that there were indicators available for the extent to which these reforms were desired by citizens. There were also instruments available to pressure politicians unsympathetic to reform, to go along with these reforms anyway. Opinion polls showed massive support for reform. More influentially, the referendum result in Hessen showed that citizens would actually vote for reform. The easily-gathered signatures for an initiative in North Rhine-Westphalia showed that citizens could be mobilized for reform in many states. This combination of support amongst citizens and instruments to pressure politicians blocking the reform was crucial in the cases of the elected mayor. In the cases of the introduction of referendums these instruments mattered less, because the necessity of reform came from contextual shocks. What did matter in both these cases, was the fact that the federal structure made that no *Land* wanted to be the odd one out when it came to democratic possibilities for their citizens.

A final remark has to be made regarding individuals and institutes. In the case of directly elected mayors, Walter Wallmann has to be mentioned for pressuring on the referendum in Hessen. There is quite some consensus on the fact that it was a politically motivated move with the upcoming elections in mind, but it was still a move of notable worth. In the case of the introduction of referendums at the state level, the role of Barschel is noteworthy. His political antics caused such a crisis that reform was seen as the only solution to restore faith in the political system. In both reform cases the KGSt and *Mehr Demokratie* have to be mentioned. In both cases we have well organized and respected organizations that argue and lobby in favor of democratic reforms.

4.4.3 *The situational circumstances of the reform processes in Germany*

The situational circumstances of the two reform trajectories show overlap and difference. In terms of overlap, we can note the general context of lowering electoral turnout in Germany, the rise of the Green party (*Bündnis '90/die Grünen*), and the talk of *Politikverdrossenheit* and *Parteienverdrossenheit*. In some states, debates (take North Rhine-Westphalia) about these issues were more prominent than in other states. Politicians knew that people were increasingly fed up with the way politics took place, so they were sensitized to the possibilities of political reform. Furthermore, politicians saw the drop in turnout as a result of political discontent. For politicians, it was an indicator that something was wrong with the system (Scherer 2010: 133). This can be contrasted to the Netherlands, where there were figures available that showed massive support for reform, but these figures never became a situational circumstance that caused a serious stir amongst political actors. Even though the context is different in Germany,

circumstances that did not cause a (big) political problem for Dutch political actors, did cause German political actors to seriously commit to reform. The debates about the democratic system in German states did not only consider (direct) democracy, but also managerial and administrative reform.

Wollmann (2002) specifically connects the pressure for democratic reforms with the administrative reforms of the '*Neue Steuerungsmodel*'. He sees these democratic reforms as a move to politicize politics, whereas the NPM reforms were attempts to managerialize administration (Wollmann 2002: 82). However, three contextual events during the reform process were influential for reforms in different states. The first event was the Barschel affair in Schleswig-Holstein at the end of the 1980s. This led to a pressure to reform the Constitution in Schleswig-Holstein to regain legitimacy. The second event was the reunification of Germany. The new German states oriented themselves towards the South German states in terms of their state democracies, which presented the old states with a fact that led to questions regarding the positions of citizens in their state. The third event was the result of the referendum in Hessen. Because of the overwhelming majority supporting the introduction of directly elected mayors, it was clear that there were many citizens in favor of such reforms.

These three situational circumstances were all influential because of the federal structure of Germany. Where the first of the three analytical points looked at each reform process as a formal process in one *Land*, the reform wave as a series of reforms cannot be understood without reference to the German federal structure. When there are other states introducing more direct democratic instruments than are possible in one's own state, even though the citizens of some of these states were suppressed by a dictatorial regime until recently; Or when another state introduces referendums leaving your state to be the only state without such instruments; Or when the result of a referendum is so overwhelmingly in favor of reform in one state and opinion polls show similar figures in one's own state (and there are even direct democratic instruments for citizens and opposition parties to channel those opinions).³⁷ In all those situations, parties unwilling to reform are simply forced to consider their position regarding reform, lest they want to risk electoral punishment. Each time, the pressure is similar: are the citizens in those other states more capable, or intelligent, or something else, that they are viewed as capable enough to deal with that instrument whilst ours are not? Vetter explains this as part being caused by rational learning and electoral strategies (Vetter 2009: 135).

37 Hessen and the moves of the DDR are the two main facts mentioned by Wehling and Kost. Wehling, H.-G. and A. Kost (2010). *Kommunalpolitik in der Bundesrepublik Deutschland - eine Einführung. Kommunalpolitik in den deutschen Ländern. Eine Einführung*. A. Kost and H.-G. Wehling. Wiesbaden, VS Verlag.

4.5 DEMOCRATIC REFORM IN GERMANY

The German states have implemented many reforms since the 1990s. The reforms discussed above, are certainly not all the reforms that have taken place. Reforms such as *Bürgerkommunen* (Bullmann 2004; Bogumil 2005; Schmidt 2007) have not been discussed, in order to have a relatively comparable case selection. Other reform debates have also taken place, such as debates on directly elected Prime Ministers at the state level. This reform idea has not been implemented. Another electoral reform, that of *Kumulieren* and *Panaschieren*, has been implemented at the state and local level. *Kumulieren* and *Panaschieren* means that voters get more than one vote in elections which they can give to different candidates of different parties. This allows voters to spread their votes along different candidates or parties they prefer.³⁸

In terms of the drivers of 'reform success' in Germany, there has been a mixture of intertwined events and happenings that have led to the introduction of directly elected mayors and referendums in all the *Länder*. A few stand out in particular. The first is the institutional structure. The institutional structure helped in several ways. First, it provided with relatively easy procedures to reform the state Constitutions, most of the times requiring only a single 2/3rd majority. Second, there were already states which had (introduced) the democratic instruments that were debated as reform possibilities in other states. The instruments had not led to problems in these states and according to some (most notably Banner and the KGSt) even helped them outperform other states in terms of their governance capacity. Third, when parties were unwilling to reform, the institutional structure often provided means to pressure these parties, such as formal possibilities for initiatives.

The second has been a series of events that helped the reform process going: the Barschel-affair, the reunification of Germany and the orientation of new states towards the South German states, and finally the referendum result in Hessen. These events did not *have* to lead to reforms taking place, but they did so because of a third factor: the way citizens and politicians dealt with these events. Citizens were clearly in favor of these reforms if one looks at opinion polls at the time. However, citizens not only stated such in opinion polls, but they 'put their money where their mouth was' and voted accordingly in referendums or signed petitions in favor of these reforms en masse. Political parties for their part, feared electoral punishment if they did not go along with these reforms and played a different game when they realized for themselves that the reforms could not be stopped without costs. Political parties would go along with the reforms, but attempt to steer the end result towards their initially desired result as much as possible. This desired result was influenced by political considerations (how can we become most influential?), but reforms were not blocked because of fundamental

38 *Kumulieren* and *Panaschieren* is seen as part of reforms against *Parteienverdrossenheit* especially, because it decreases the influence of parties on the people that will be transferred from the list to an elected body.

considerations such as ‘it does not fit our system’. It was clear that citizens wanted the reforms, and German politicians turned out to think quite pragmatically about at least these aspects of their political structure.

To provide some extra information that goes beyond the question at hand in this study, something can be said about the results of these reforms. The results of the reforms are mixed. Haus notes that proof for higher trust figures in local democracies because of the democratic reforms still has not appeared (Haus 2006: 286). The effects on turnout – as it was seen as an indicator of *Politikverdrossenheit* – were also of only limited value. In most instances, the first mayoral elections (sometimes linked to municipal elections) had a higher turnout than the last council elections before the mayoral elections took place, but these higher turnout figures then dropped again in subsequent elections. In Hessen, the 2006 municipal and 2009 state elections had the lowest turnout rates in Hessen’s history (Dressler 2010: 173). In North Rhine-Westphalia, there has been no substantial change in turnout figures (Kost 2010: 240). Turnout has been dropping in Saxony (Rehfeld-Staudt and Rellecke 2010: 302).

We have seen that there have been trends towards more direct democratic activities in North Rhine-Westphalia and Bavaria. This could mean that the results of direct democratic reforms do not lie with growth of trust, but instead with growing responsiveness. Vetter seems to argue in this direction. She states that there are four main consequences: 1) The local power structure has changed in such a way that brought in the people as sort of veto players; 2) That these reforms should bring with them more responsiveness, which according to her is the case as everywhere the directly elected mayor has been introduced; 3) That there is increased responsiveness due to increased possibilities of citizen activities; And 4) finally, she sees gradual changes in administrative culture in which citizens are seen more as equals than subjects (Vetter 2006: 266). These are formidable changes in the relation between citizens and politics. More responsiveness is something that seems like a good idea when people trust politicians ever less, because it gives people a chance to intervene when some issue is apparently taken too far away from people’s wishes. The democratic reforms discussed in this Chapter can be seen as a safety valve. The reforms ensure high quality policies as they force political parties to aim for high quality people and policies (Wehling 2010: 364). There is more dependency on citizens. Citizens are able to exert more influence on political institutions and policies. As a consequence, the councils and political parties are the main ‘losers’ of the reforms (Wehling 2010: 365).

Chapter 5

Democratic reform processes in Austria

5.1 INTRODUCTION

In this Chapter the Austrian reform cases will be discussed. As will become clear, the Austrian cases are of a mixed nature in terms of where the decision to reform was taken. In the case of the introduction of the consultative referendum (*Volksbefragung*), the decision to reform was taken at the national level, but in the case of the introduction of directly elected mayors, it was a mixed affair. In the case of direct mayoral elections both subnational states (*Länder*) were involved and the national (federal) government. In contrast to Germany, Austrian federalism has not led to a rigid federal Constitution that is characterized by *Politikverflechtung*. In many cases the federal government is capable of changing policies without much resistance from the *Länder*. Because of the mixed state-federal nature of the reforms in Austria, Austria can be placed between the ‘extremes’ of federal-state decision-making in Germany and central-government decision-making in the Netherlands.

In this Chapter, I will start with a brief historical introduction to the Austrian political structure. As in the German reform cases, extra attention will be paid to the different ‘first mover’ states in the reform process. After the empirical description of each reform case, there will be a brief analysis of the reform in which the most important and striking events will be singled out. At the end, the two reform cases will be compared with each other to create a better understanding of what is typically Austrian about Austrian democratic reform processes.

5.1.1 Background: a (historical) sketch of Austrian political institutions

Austria is a federal state with nine *Länder* and 2357 (in December 2011) municipalities (Gemeindebund Österreich 2011). The current Austrian republic is known as the Second Republic. The first Austrian Republic was created after the First World War. At that point in time, Austria was only a small remnant of the Austrian-Hungarian Empire from before the war. The First Republic was a federal republic that was inspired by neighboring countries, such as Switzerland, in introducing direct democratic elements into the national federal Constitution, but which also retained a strong link to the past (Dachs, Gerlich et al. 2006; Pelinka and Rosenberger 2007). According to Bullmann, the first democratic Constitution of Austria in 1920 was, to a large extent, based on the *Staatsgrundgesetzen* of 1867 (Bullmann 2004). This Constitution was heavily amended in 1929. After the Second World War – before which, in 1938, Austria had allied itself with Nazi-Germany based on a controversial referendum result, a step that later became known as the *Anschluß* – the 1929 Constitution and the party system of the First Republic was put back in place to a large extent (Pelinka and Rosenberger 2007: 21). However, at that point Austria was effectively ruled by the Allied Council. Only in 1955, when Soviet Russia and the Western Allies came to an agreement on the position of Austria, the occupation of Austria ended and the country could continue independently as the Second Republic. The deal that allowed the Allied forces to leave their occupied zones, was that Austria had to become a neutral country between West- and East-Europe. After this, both sides respectively hoped that

Austria would move in the direction of the East or West. Austria was oriented more towards the West than the East, although a more formal approach happened only after the Iron Curtain fell and Austria opted for EU membership.

Müller (2006: 105), following Aristotle, distinguishes two fundamental roles of the people in Austria: as being ruled and as 'ruling'. The latter role is only an active role when there is an election taking place. In the Austrian case this can mean either a referendum (*Volksabstimmung*) or elections for a representative body. Contributing in such a way to the national representative bodies takes place through three separate elections: elections for the *Nationalrat*, elections for the *Bundespräsident* (federal president), and state elections (*Landtagswahlen*) that have consequences for the composition of the *Bundesrat*. There are also elections for municipal councils (*Gemeinderatswahlen*) and, since Austria joined the EU, elections for the European Parliament.

The most important Parliament in Austria is the *Nationalrat*, which is elected in direct elections by the people of Austria as a whole. A 4% electoral threshold is in place to get into the *Nationalrat*. Currently the *Nationalrat* has 183 members. A normal legislative period lasted for 4 years when the reforms discussed in this Chapter were discussed (since a constitutional amendment in 2007 the period has been extended to 5 years), but if the *Nationalrat* decides so – for instance in case of a coalition crisis – this period can become shorter. The *Nationalrat* is the most important electoral body because it has the most far reaching electoral powers and because the federal government needs support of the *Nationalrat*. An indication for this power can be found in the process of constitutional amendments. A 'normal' constitutional change can be made by a qualified two-thirds majority in the *Nationalrat* without much intervention by the *Bundesrat*. Two restrictions are, that at least half the members of the *Nationalrat* have to be present and that a third of the members of the *Nationalrat* can claim a referendum on the amendment. Big changes (when the changes are big enough to be considered a *Gesamtänderung*) in the Constitution have to be presented to a vote by the people in a referendum in any case. So far this has only happened when Austria joined the European Union for which a referendum was held in June 1994 (and citizens supported entry with 66% of the vote at a turnout of 82%) (Pelinka and Rosenberger 2007: 97).

When the *Nationalrat* has voted on an issue, it is sent to the *Bundesrat*. The *Bundesrat* is officially the representative body of the *Länder*. Members of the *Bundesrat* are elected by the State Parliaments. So the number of members from a specific party is relative to the number of seats a state has in the *Bundesrat* and the proportion of seats a party has in the state legislature. In contrast to Germany's *Bundesrat* the members of the Austrian *Bundesrat* have a free mandate; they are thus officially free from instructions by the state governments or legislatures. In practice there will be contact and coordination between the members of the *Bundesrat* and their respective home state, because the members of the *Bundesrat* are dependent upon their local party for reelection. Still, Fallend notes that decision-making in the *Bundesrat* is determined by party-political considerations (2011: 178). The *Bundesrat* is not a very strong House of Parliament. Normally, it can only temporarily block a proposal. When it votes against a proposal, it

is sent back to the *Nationalrat* that has to vote on it again. This is called a *Beharrungsbeschluss*. Only in the case of a (constitutional) law that concerns the organization of the *Bundesrat* itself the *Bundesrat* has a veto.

The *Bundespräsident* is elected in direct elections by the people for a period of six years and is eligible for a second term. Although the *Bundespräsident* officially has a highly influential position, in practice Presidents take a modest stance. This waiving of a potentially dominant position is known by the word *Rollenverzicht* (Pelinka and Rosenberger 2007: 137). This position also reflects the history of the Austrian presidential position, with the Christian Social Party wanting strong leadership but the Social Democratic Party opposing this before the Second World War (Pelinka and Rosenberger 2007: 28). The direct presidential elections were thus a result of Christian Socialist influence in the 1929 constitutional amendment, but direct elections did not make the President a strong leader above all others, and this somewhat weaker position of the president has continued to exist also after the Second World War. For instance, the President has to agree with the government that is formed. First the President has to appoint the government, and after that the government needs to retain support from the *Nationalrat*. In practice, the President will agree with the proposal developed by the government-to-be. It is very difficult to remove the President from his function (Müller 2006: 106; Schaden 2006). The President appoints the members of the constitutional court (*Verfassungsgerichtshof*) on the base of proposals by different institutions (government can propose eight positions, the *Nationalrat* three and the *Bundesrat* three). The constitutional court is an influential court because it is not afraid to judge laws as unconstitutional and thus government and parties at the national level strive to prevent their laws from being judged unconstitutional (Gamper 2003; Schaden 2006: 225). For a long time, the constitutional court was less inclined to intervene, which Pelinka and Rosenberger view in the light of the grand coalition habit of sequentially appointing ÖVP and SPÖ judges. This procedure stopped when the tradition of forming grand coalitions, which was pervasive, except for one short period when the SPÖ ruled with the FPÖ (see Table 5.1), was ended in 1999 (Pelinka and Rosenberger 2007: 150).

The Austrian *Länder* are Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tyrol, Vorarlberg, and Vienna. Vienna has a special position as a city-state, comparable to the German city-states. Unlike the German *Länder* after the Second World War the Austrian *Länder* can mostly trace their origins back to the middle ages (Dachs, Fallend et al. 1997; Bullmann 2004: 120; Fallend 2006; 2011). The Austrian *Länder* are required by the federal Constitution to have a unicameral system. The sizes of these Parliaments depend on the sizes of the population in these *Länder*. In this system changing the state Constitution is relatively easy, normally requiring only a qualified two-thirds majority. Only in the cases of Vorarlberg and Salzburg is referendum required in order to change the state Constitution when the constitutional change at hand is a *Gesamtänderung*. There is one big limitation to the freedom of states in enacting laws: they have to be in line with the federal Constitution. The laws developed by states are allowed to give citizens more rights than they might have at the federal level, but it is not allowed

to deprive citizens of rights attributed to them by federal law, nor can state laws go explicitly against federal laws (Pernthaler 1992; Marko and Poier 2006). Marko and Poier (2006: 943) consider Austria an exceptional federal state when compared to Germany, Switzerland and the USA, because the extent of representative democracy in *Länder* and the possibilities for *Länder* to develop direct democratic arrangements are explicitly constitutionally arranged.

Despite the federal structure of Austria, there is a highly unequal division of power between the *Länder* and the federal state in Austria. For Pernthaler the relationship between local authority and the federal state is so unequal that he puts the term autonomy between inverted commas when discussing the buildup of the Austrian system (Pernthaler 2000: 10). Pernthaler argues that the Austrian system of federalism is a system of 'unitary' federalism in which all the federal states are alike to a large extent and dominated by the federal government. This can be contrasted to asymmetrical federalism, in which differences between states are allowed, thus leaving room for the development of relatively autonomous states (Pernthaler 2000: 29). We have already seen that the federal states have only so much room to create their own laws. Suppose that they want to use their power to create a law that attributes more rights to citizens than normal federal laws would, then they are limited by state budgets. About 11 per cent of the total of Austrian taxing revenues goes to the *Länder* in grants (OECD 2011). Of these grants a part has to be used to implement certain federally demanded policies, so for the Austrian states a large part of the autonomy lies in the specific implementation of federal policies because the *Länder* do have extensive responsibilities in administering the implementation of federal policies. However, in practice the *Länder* can have considerable influence.

"When one looks at the Constitution in practice [the *Realverfassung*, CG] the picture changes. *Länder* have indirect representation in the *Nationalrat* and the *Bundesrat*. The parties can simply state 'then [if a politician does not listen to local interests, CG] we will not place you (on an electable position) on the list', and then you are stuck and have to play along" *SPÖ Respondent*.

"Of course, once one takes place in the *Bundesrat* one has a free mandate, but in practice one does take into account what the party thinks of it, what is thought of a measure locally, and so forth" *SPÖ Respondent*.

The State Parliaments are elected based on proportional representation. A legislative period lasts for five years in all *Länder* except for Upper Austria, where a legislative period counts six years. In the *Länder*, several instruments have been developed that enhance the control rights of the states, but the state governments are typically more dominant than the State Parliaments. Although decisions can be taken by a majority "[i]n practice [...] decisions tend to be taken unanimously. Between 80 and 90 per cent of the legislative provisions are adopted unanimously" (Bullmann 2004: 126). For Bullmann, the cause of this fact is to be sought in the

political climate of the states, and he remarks that critics note that this high level of unanimous decisions is mirrored by a high number of 'non-decisions' (Bullmann 2004: 126). The head of the state government is the *Landeshauptmann* (Provincial Governor), who is elected by a simple majority of the members of the State Parliament, and they have an influential position as head of the government, bureaucracy and most important politician of the state.

In some ways, Austria can be considered a 'flawed' federal state because the *Länder* are bound more tightly by the powers of the federal government than most federal states. There are many cases in which the *Länder* have no choice but to follow federal policy, and the Upper House (*Bundesrat*), designed to be a representative organ for the *Länder*, is very limited in its power to stop the federal government from implementing certain policies. The *Bundesrat* is also dominated by party political considerations, so that for example SPÖ *Bundesrat* members will try to keep their party out of trouble in general, whether in the *Nationalrat* or in State Parliaments.

There are four major characteristics of the Austrian republic: legalism, consociationalism, corporatism, and federalism and local self-government (Fallend 2011: 175). In terms of the typology of Hendriks, Fallend characterizes Austria as a consensus democracy (2011: 189). The consociationalism of the Austrian republic was partially caused by the experiences before Second World War, in which the country was very divided, and it shows in such institutions as the proportionality rule (*Proporz*) for *Länder* governments, which means that all the parties in Parliament have a right to be represented in government based on their relative strength (Fallend 2011: 176). When the Freedom Party of Austria (*Freiheitliche Partei Österreichs*; FPÖ) was big enough to demand government functions in all the seven states with a *Proporz*-system, the *Proporz*-system was ended in Salzburg and Tyrol in order to keep the FPÖ out of the government (Fallend 2011: 181). This latter conclusion seems validated by the fact that, after the cancellation of the *Proporz*-system, grand-coalitions between the SPÖ (*Sozialdemokratische Partei Österreich*: Social Democratic Party of Austria) and ÖVP (*Österreichische Volkspartei*: Austrian People's Party) were formed even when one of the two parties had an absolute majority.

The Austrian system is also marked by informal mechanisms. Fallend (2011: 178) notes that the *Landeshauptleutekonferenz* (Conference of the Provincial Governors) is the most important articulator of state interests in Austrian politics, whilst this is officially no more than a consultative gathering of Provincial Governors. The same goes for the process of policy development. Although it has decreased during the period between 2000 and 2006 – when there was a 'normal' ÖVP-FPÖ coalition (not a grand coalition of ÖVP and SPÖ) – most of the laws passed in Austria come from the *vorparlamentarische Bereich*, which means that they are effectively decided on before the laws are openly debated in Parliament (Pelinka and Rosenberger 2007: 127). These pre-parliamentary laws are not debated because the different (corporatist) partners that matter have debated proposals and agreed on a direction before the law is debated on in Parliament. Because government and the two major parties would also be in agreement beforehand any debate would be mute. This practice has become less influential since the 1970s,

and with the 'normal' coalition there were more laws passed that were initiated by Members of Parliament, but Pelinka and Rosenberger also note that the willingness to negotiate with these corporatist partners was considerably less between 2000 and 2006. Other influential groups are the *Österreichischer Städtebund* (Austrian Union of Cities) and the *Österreichischer Gemeindebund* (Austrian Union of Municipalities).

"Since the mid-1980s, party systems of the 'moderate pluralism' type have developed [...]: voter turnout, on the average, has declined from 93.9 per cent in the 1940s to 80.7 in the 1990s. Voter volatility has increased dramatically; adding party changers, mobilized non-voters, and de-mobilized party voters, in the last provincial elections on average 29 per cent of the voters changed their preferences" (Fallend 2011: 183/184)

Local government in Austria is made up out of municipalities (*Gemeinden*) and districts (*Bezirke*). The municipalities have their own scope of authority, which is usually quite small and aimed at local issues, including such things as local police, land use, and leisure facilities. Their policies are controlled in terms of legality and efficiency. There is a delegated sphere of action in which the mayor acts on behalf of federal or provincial authorities (Fallend 2011: 186). At the municipal level *Proporz* type regulations are very common, but there is variation between municipalities. The head of the executive body (*Gemeindevorstand*) is the mayor (*Bürgermeister*). The mayor is also the head of the local council and the representative of the municipalities when dealing with external organizations and people from those organizations.

5.1.2 Political developments in Austria

All the elections in Austria are influenced by political parties. In indirect elections this is the case because of the influence of parties on the candidates that are placed on the ballot and in direct elections because political parties will campaign for their desired outcome.

The federal government, as Fallend states, has been dominated by the Christian-democratic ÖVP and the SPÖ, because of which "neither federalism nor local government have been able

Legislative period	Ruling party or coalition during (most of) the legislative period
1945-1949	ÖVP/SPÖ/KPÖ*
1949-1966	ÖVP/SPÖ
1966-1970	ÖVP
1970-1983	SPÖ
1983-1986	SPÖ/FPÖ
1986-1999	SPÖ/ÖVP
1999-2006	ÖVP/FPÖ^
2006-running	SPÖ/ÖVP

Table 5.1 Ruling parties or coalitions in Austria

*KPÖ was a part of this coalition only until 1947.

^In 2005 the FPÖ was replaced by BZÖ in this coalition.

to develop their full potential" (Fallend 2011: 174). The dominance of these two political parties has been most striking in the (almost) 40 years after the Second World War in which there was either a grand coalition between these two parties or one of the two parties held a majority (alone or with the help of the FPÖ) without the other. On all occasions in this period, these grand coalitions were big enough to be able to change the Constitution if it pleased them. See Table 5.1 for an overview of the ruling parties and coalitions at the national level in Austria and Table 5.2 for an overview of the development of parliamentary seats in the *Nationalrat*.

The organization of state-level parties in Austria mirrors the organization of parties at the national level. The two biggest parties, the ÖVP and the SPÖ have traditionally dominated Austrian politics in the federal states. Fallend notes that the ÖVP has been organized in a decentralized fashion since 1945 onwards, with local state parties functioning relatively independently from the national party, whose main base is Lower Austria with about 40% of its members (Fallend 2011: 182). Pelinka and Rosenberger state that even before the Second World War the Christian-socialists were in favor of much local autonomy and strong leaders (2007: 27/28). The SPÖ is more centrally organized, with its main power base in Vienna (26% of its members), a city that has been ruled by the SPÖ traditionally. In recent years, on the *Länder* level as well as the federal level, several other parties have become more prominent. The most prominent of these parties have been the FPÖ and the *Grünen* (Green party). The FPÖ has made a spectacular rise since Jörg Haider became the party's national chairman in 1986 and organized the party in a more national way – instead of retaining different local bases. The FPÖ was a tainted party a long time for a lot of people in Austria, because it was the successor to the German nationalist party that was involved in the *Anschluß* of Austria. Haider managed to draw the party back into the middle ground with his populist politics, but still the FPÖ is critically observed in Austria and abroad (Lederer, Plasser et al. 2005).

"The relations in Tyrol between the FPÖ and other parties were very normal. This changed after a relatively long time. When Haider had his national political successes" *FPÖ Respondent*.

The *Grünen* are mainly Vienna-based and became an influential factor in national and sub-national politics from the 1980s onwards. The rise of the *Grünen* has to be seen in the light of the environment becoming a bigger issue.

Absolute majorities are not uncommon in Austrian politics, despite proportional representation. At the national level the ÖVP ruled with an absolute majority for four years from 1966 onwards, and after this period there were four consecutive SPÖ absolute majorities from 1970 to 1983 led by Federal Chancellor Bruno Kreisky. At the state level in all *Länder*, except for Salzburg, absolute majorities were common for decades (Fallend 2011: 183).

Because of the rise of other parties than the traditional two big parties, the Austrian party landscape has changed its nature. The party system directly after the Second World War could

	45	49	53	56	59	62	66	70	70	71	75	79	83	86	90	94	95	95	99	02	06	08
Österreichische Volkspartei	85	77	74	82	79	81	85	79	78	80	80	77	81	77	60	52	53	52	52	79	66	51
Sozialistische Partei Österreichs	76	67	73	74	78	76	74	81	81	93	93	95	90	80	80	65	71	71	65	69	68	57
Freiheitliche Partei Österreichs				6	8	8	6	5	6	10	10	11	12	18	33	42	40	41	52	18	21	34
Die Grünen Alternative														8	10	13	9	9	14	17	21	20
Liberales Forum																11	10	10				
Bundnis Zukunft Österreich																				7	21	
Kommunisten und Linksozialisten				3																		
Kommunistische Partei Österreichs	4																					
Wahlpartei der Unabhängigen		16	14																			
Wahlgemeinschaft Österreichische Volksoption				4																		
Kommunistische Partei Österreichs u. Linksozialisten (Linksblock)		5																				

Table 5.2 Developments in parliamentary seats in the Nationalrat of Austria*

Source: http://www.bmi.gv.at/cms/bmi_wahlen/_sitemap.aspx (visited on 12/12/2011)

* With the 1971 elections the number of parliamentary seats was raised from 165 to 183.

be characterized as a Three-Party System. This developed into a Two-Party System quite soon, but at the beginning of the 1980s we see a development back towards a Three-Party System (Gerlich 1987: 65). As can be seen in Table 5.2, the number of parties involved in Austrian politics (that pass the 4% hurdle and get seats in the *Nationalrat*) has risen in recent years, so that the system must now be even closer to a Multiparty System than in the 1980s. The move away from the traditional 'camp' (*Lager*) structure in Austria (generally, citizens used to belong to either ÖVP or SPÖ) is part of a process that has been developing for a while. It has to do with cultural factors such as urbanization, the growth of the middle class, and the rise in the number of educated people on the one hand, and the emergence of a "period of 'de-alignment, political disaffection and voter protest'", with growing critique on the traditional parties, on the other hand (Fallend 2011: 185). Pelinka and Rosenberger also note that the party landscape has changed considerably. The traditional support bases of the parties are waning because of lower party loyalty. This leads to new coalition possibilities (Pelinka and Rosenberger 2007: 37).

At the same time as this political pluralization took place, a rise in the usage of especially initiatives (*Volksbegehren*) can be noted. This instrument was, as mentioned above, introduced in the federal Constitution already in the First Republic, but only in the 1960s the necessary implementation laws were passed. Especially in recent years, under the influence of the FPÖ, it has been used more frequently.

“The *Volksbegehren* was demanded by citizens at the time and criticized [...] it has mainly become an instrument for the political opposition and all sorts of minorities to get their message heard” *SPÖ Respondent*.

These initiatives can be viewed in the light of *Politik-* and *Parteienverdrossenheit* and provide a way to get around the powerful grip of political elites and correct political parties where necessary (Pelinka and Rosenberger 2007: 88). Generally, turnout for initiatives is lower than for elections, and, remarkably, the initiatives that had a high turnout rate were least acted upon by politicians (Müller 1998).

5.2 DIRECT MAYORAL ELECTIONS

“Are citizens too stupid to elect mayors? No. Otherwise, you should not let them elect councils either” *SPÖ Respondent*.

5.2.1 Introduction and background to the reform process

Before the 1980s, Austrian citizens had an unusually high regard for their political system compared to other systems (Bullmann 2004: 134). This was especially the case in the *Länder*, where approval ratings were generally higher than at the federal level, except for Vienna. But as in other places in Europe, both at the federal and subnational level in Austria we see declining turnout for elections and declining party membership.

In Austria no *Länder* were created after the Second World War with directly elected mayors such as Bavaria and Baden-Württemberg in Germany. When the debates about the possibilities of direct mayoral elections got going in the 1980s there were no directly elected mayors institutionalized in any Austrian federal state (Stolzlechner 1989). The debates that got going in the 1980s were not the first debates on the topic. There had been previous debates in Styria, and in the 1950s there were experiments with directly elected mayors in Vorarlberg. In 1958, in the municipality of Wolfurt in Vorarlberg, the first direct mayoral elections took place (Trauner 2001: 6; Steininger 2006). But the arrangement in Vorarlberg was quite restrictive and was removed only a few years later without extensive usage.

Instead, the mayor has traditionally been elected by municipal councils in all the Austrian *Länder*. As a rule, the political leader of the biggest party in the municipal council would be-

come the mayor – so in that sense the municipal elections were also elections on the mayor to be. The mayor in Austria is clearly the dominant figure of local politics. In the four areas in which the mayor is active – as part of the executive, in political parties, in the council, and in relation to citizens – the mayor has a more powerful position than the other institutions of local democracy (Steininger 2006: 997).

When debates about the possible introduction of direct mayoral elections got going in the 1980s, these were primarily debates in the public sphere, not in Parliaments. Of the political parties, only the FPÖ showed itself to be a proponent of direct mayoral elections. However, at that point in time the FPÖ was not yet as influential as the FPÖ would later become. Furthermore, the SPÖ and ÖVP reasoned that the FPÖ, with its adherence to strong leaders, would only stand to gain from a move towards directly elected mayors – also because of the otherwise quite restrictive political system in Austria.

In this section I will subsequently discuss *Länder* that introduced directly elected mayors in Austria, as well as the intervention of the Constitutional Court and the role of federal Parliament in the reform process. The paragraph will end with an analysis of the formal reform procedure, the role of different actors, and the role of the context of the reform cases.

5.2.2 The reform process: introducing direct mayoral elections in Austria

*Carinthia and Tyrol move towards directly elected mayors*³⁹

At the end of the 1980s, the first serious attempt to introduce direct mayoral elections took place in Carinthia. An important factor was the rise of Jörg Haider in Carinthia. Jörg Haider was a member of the Carinthian FPÖ and was the youngest member of the FPÖ in the *Nationalrat* in 1979. When the SPÖ built a coalition with the FPÖ in 1983, the influence on policy of all the FPÖ Members of Parliament grew. Haider managed to become leader of the Carinthian FPÖ, the only state branch of the FPÖ to win seats in state elections in 1984. In 1986, Haider also managed to become the leader of the federal FPÖ organization. Because of the election of Haider as national FPÖ-leader – the Carinthian FPÖ branch was known to be German-nationalist – the SPÖ stepped out of the coalition they had formed with the FPÖ in the *Nationalrat*. However, in the subsequent *Nationalrat*-elections Haider's FPÖ grew from 12 to 18 seats, almost doubling the percentage of votes they received. Despite this result the FPÖ did not get another governmental position, but instead a grand coalition was formed between the SPÖ and ÖVP. After this, Haider focused on Carinthia where he managed to become Provincial Governor, even though the FPÖ did not have a majority in the Carinthian *Landtag*, because he managed to make a deal with the Carinthian ÖVP.

39 Although there seemed to be confusion among those interviewed about which state was considered the first to introduce direct mayoral elections, the answer should be Carinthia – although the reform processes in both federal states did overlap.

As *Landeshauptmann*, Haider had substantial agenda setting powers, and it would have been in line with both his own and his party's preferences to start the introduction of direct mayoral elections.

"Carinthia played a leading role, and above all this was to the merit of Haider" *FPÖ Respondent*.

Contrary to these expectations, it was the Carinthian SPÖ that introduced a proposition for directly elected mayors in State Parliament on the 17th of October 1989. The logic of the SPÖ was that they had to do something to stop the rise of the FPÖ and this seemed like an effective and popular measure to them (Scherwitzl and Ebner 2008).

"The ÖVP and FPÖ had made an agreement under the leadership of Haider that they would support each other's candidate for a mayoral position if the SPÖ did not have an absolute majority [...] the SPÖ would lose a lot of mayoral positions" *SPÖ Respondent*.

"Everybody was calculating. Do I lose, win, what will happen? But there was no pact at the local level between the ÖVP and FPÖ; that would be impossible. It might have been communicated like that, but such an arrangement is not enforceable at the local level" *FPÖ Respondent*.

The Carinthian SPÖ made direct mayoral elections an element of their party program in 1986⁴⁰, and the Carinthian FPÖ did so in 1988. The Carinthian FPÖ might have been influenced by local experiences here as well.

"There was a very popular FPÖ-mayor, but his party did not become the biggest party in the local elections and they could not create a coalition to keep the FPÖ-mayor in place. So the FPÖ lost their mayoral position" *SPÖ Respondent*.

After the introduction of the proposal, the decision was made to further debate the introduction of direct mayoral elections in the *Ausschuß für Gemeinde- und Umweltpolitik* (commission for municipal and environmental politics). The debates in this commission are not available to the public, and no transcripts are made. Only the final recommendations of the commission are made public.

40 An ÖVP Respondent questions the sincerity of the party goal at that time: "Why didn't they make something happen then? Considering they had an absolute majority in the *Landtag* at the time, this should have been a relatively easy move".

From a statement made by representative Kaiser of the SPÖ on the 20th of November 1990 in the State Parliament, we do know that it was a tough (*zäher*) negotiation process to get to a proposal that would be carried by all parties (20. *Sitzung der Kärntner Landtages – 20. November 1990*). However, the end result was a proposal that was due to be implemented quite rapidly. Only one year later, at the same time as the municipal elections in 1991, should these direct mayoral elections take place for the first time. In the parliamentary debate on the proposal – which was basically a theatre performance, as the agreement was already made in the abovementioned parliamentary commission – Kaiser mentions that the SPÖ had four main reasons to support these direct mayoral elections: 1) it would end the negotiations about who would become mayor – for, despite the tradition of the leader of the biggest party becoming mayor (a tradition also based on the presumption that that leader would be the person that gathered the most votes), there were instances where this did not happen. When the FPÖ grew in power there were occasionally three parties of roughly equal size and instead of the leader of the biggest party, or the person with the most votes, becoming mayor, a coalition would be forged and another person would become mayor. This led to heavy criticism of the SPÖ (and ÖVP) in particular –; 2) because of opinion polls that showed the Carinthian people to be heavily in favor of directly elected mayors; 3) the consensus amongst political parties that there should be more room to elect specific persons (and especially at the local level); and 4) to make democracy more attractive (in other words, to do something about *Politikverdrossenheit*).

Of course, there were also protests against the reform in principle. These were mainly to be found among local functionaries who feared for overwhelmingly powerful mayors, mayors with local empires (*Ortskaisertum*). These functionaries were basically all those that were not mayors – aldermen, council members – all those that stood to lose from directly elected mayors. There were also mayors that apparently feared for their position. Hausenblas of the SPÖ notes that the mayor of Klagenfurt (the state capital of Carinthia) even attempted to get the introduction postponed until after the next election round. There were also criticisms against the exact arrangements that were reached and the point in time in which they were reached. These criticisms were mainly expressed by ÖVP and FPÖ, but also present in the SPÖ.

“In the SPÖ there were some tough debates about the matter. There was some national skepticism to be overcome [...] Ambrozy [Provincial Governor of Carinthia, CG] had to do some debating with the federal party” *SPÖ Respondent*.

The critiques were more than matched by support. The *Gemeindebund*, and especially the president of the *Gemeindebund*, Rudolf Kores, are mentioned for the positive role they played in the process of the introduction of direct mayoral elections.

“There were generally positive reactions. The media were positive. There was not much time to get the law checked by the constitutional check at the federal level, but there

would be no veto from the government. It was a kind of test. 'Let's see what happens in Carinthia'" *Gemeindebund Respondent*.

"Kärnten ist die kleine Welt, in der die große ihre Probe hält" *ÖVP Respondent*.

After all, at a conference of mayors in the 16th of January 1990 the mayors voted in favor of direct elections despite the reserve of some. One resolution recounts that citizens have time and again asked for more possibilities to vote for individual candidates. In the end, the ÖVP and FPÖ did vote in favor of direct mayoral elections, despite the proposition containing arrangements that they did not like. Direct mayoral elections were introduced unanimously, and there were virtually no other changes made to the municipal constitution.

Simultaneously with the Carinthian debates, Tyrol also talked about the introduction of direct mayoral elections. Several months later, on the 3rd of July 1991 the debate on the introduction of direct mayoral elections was held in Tyrol (*Stenographische Berichte des Tiroler Landtages, XI. Periode, 5. Tagung, 3. Sitzung am 3. Juli 1991*). In Tyrol, as in Carinthia, the moment the proposal was discussed in the State Parliament was a moment in which there was already an agreement on the result. In Tyrol the commission that dealt with the proposal to introduce direct mayoral elections was the *Rechts- und Gemeindeausschuß* (justice and municipal commission). Lugger of the FPÖ noted that the work of the commission was very exciting, with numerous meetings with different parties and civil servants supporting the reform process in a very good fashion.

There were attempts by the SPÖ in Tyrol in 1989 to introduce directly elected mayors, but they did not lead to reform. At that point in time the ÖVP held 25 of 35 seats in the Tyrol *Landtag*, after the elections of 1989 the ÖVP 'only' held 19 seats, still an absolute majority, but a considerably less safe absolute majority. The 1989 election result was the worst election result by the ÖVP in Tyrol in the history of the party. This led to a reorientation on the positions the party held and direct mayoral elections was a new party position to come out of this reorientation.

"Of course, there was a political consideration connected to the introduction of direct mayoral elections. The *Zeitgeist* played a role; there had been talk for a while of *Politikverdrossenheit* and *Parteienverdrossenheit*. There was interest from the *Tiroler Gemeindeverband* [...] and political scientists and journalists were very positive in response to the reform idea" *ÖVP Respondent*.

The proposal that was discussed in Tyrol did not emanate from a single party but instead was introduced in the *Landtag* by the Tyrol government. In Tyrol government there were representatives of the ÖVP, SPÖ and FPÖ, but none of the *Grünen*, which were elected into the State Parliament for the first time in 1989. The *Grünen* were also the only party not supportive of direct mayoral elections when the negotiations about introduction began.

“There was no particular excitement because of the reform. [...] There was some debate about cohabitation and the possible danger that the reform would lead to the development of authoritarian leadership” *ÖVP Respondent*.

Obitzhofer of the SPÖ notes in the debate on the third of July that the fact that it came to the introduction of direct mayoral elections – which was quite certain once the debate in the Tyrol *Landtag* took place – is proof that established political parties are not incapable of reform. There were clear indicators that the reform would be popular. Obitzhofer himself refers to the result of the referendum in Hessen and thinks that a similar referendum in Tyrol would also manage to get a majority of around 80%. He also links the introduction to the mood of democratization in Eastern Europe, where former communist countries were developing Constitutions that allowed for direct mayoral elections.

In Tyrol, there was debate on the matter of the ballots, should there be one ballot for both municipal and mayoral elections, or two separate ballots. In Carinthia, a similar debate took place that was settled in favor of ballots. In Tyrol the same consensus was reached but only after intervention of the *Gemeindebund*. The *Gemeindebund*, it should be noted, is a representative organ of the municipalities in an area (there are local chapters, but there is also a national *Gemeindebund*). As we have seen though, the mayor is the representative of the municipality towards external parties. So unless a specific arrangement is made in a municipality (which only rarely is the case) the mayor will be the representative of a municipality in the *Gemeindebund*.

“The informal work was important too, also with the *Gemeindebund*. Rudi Kores was the chairman of the *Gemeindebund* and he was also a member of the *Landtag* of Carinthia, so he had to cooperate. Besides, the mayors were in favor of the reform” *SPÖ Respondent*.

In interviews it has been stipulated that this was an important factor for the support of the *Gemeindebund* for these reforms: Why would the mayors be against a proposal that would strengthen their position?

“The mayors wanted direct mayoral elections themselves” *FPÖ Respondent*.

A noteworthy exception was Innsbruck, which did not get direct mayoral elections in the final proposal. But in 2011 the State Parliament of Tyrol changed the municipal law so that the first mayoral elections in Innsbruck will take place in 2012.

“Only Innsbruck does not have direct mayoral elections. But here the directly elected mayor is also coming. The SPÖ won in the large municipalities, we now have more mayors than before. Innsbruck will follow” *SPÖ Respondent*.

“In Innsbruck there has been debate about the matter for two decades. It does seem that ever more people are in favor of direct elections” *ÖVP Respondent*.

Many of the arguments for the introduction of direct mayoral election were repeated by all representatives except the *Grünen*. The *Grünen* did state that they were in favor of direct elections but could not agree with the specific form chosen. The *Grünen* wanted direct mayoral

	Carinthia	Tyrol
ÖVP	For	For
SPÖ	For	For
FPÖ	For	For
Grünen	X	Against (no agreement on position of council in relation to mayor)

Table 5.3: Party votes on direct mayoral elections in Carinthia and Tyrol

elections with a strengthening of the position of municipal councils. Noteworthy is also the stipulation of Posch of the ÖVP that the municipal layer of government has become considerably more important in recent years and that is thus fitting to give citizens more direct influence on the executive of their municipality. Both ÖVP and FPÖ mention the support for the reform amongst citizens. And Kranebitter of the ÖVP sees chances for youths, but also fears for populists. In the end, with only the three representatives of the *Grünen* voting against the proposal, the reform is passed with a clear majority. Table 5.3 shows the party votes on direct mayoral elections in Carinthia and Tyrol.

The Constitutional Court and the Nationalrat play a part

After Carinthia and Tyrol, Burgenland became the third federal state to introduce directly elected mayors in 1992 (Steinmair 2000; Trauner 2001). The proposal was accepted on the 7th of May and would start working as of the 1st of July. It was accepted unanimously by the State Parliament, although there was quite some debate, in which the FPÖ did several proposals to amend the legislative proposal. These were rejected, unlike the proposals that came from the parliamentary subcommittee. After the reform in Burgenland the process stopped for a while due to a judicial problem. In Tyrol, a request was sent to the Constitutional Court by one of the mayoral candidates in the municipality of Unterperfuß to check the constitutionality of the Tyrol arrangement based on their election experience of the 15th of May 1992. The Constitutional Court announced a verdict on the 1st of July 1993 and agreed with the objections from Unterperfuß and made it known that the Tyrol arrangement was not in line with the Constitution (*Verfassungsgerichtshof 01.07.1993 G75/93*). The argumentation of the Court was that there was not necessarily written word in the Constitution upon which to argue for or against directly elected mayors, but that the tasks that are attributed to the mayor require a

direct accountability relation between the mayor and the council. This relation should not be changed towards accountability to citizens so easily. According to the Constitutional Court, this move constituted a systemic change away from the more thorough representativeness of the municipal councils to a monocratic mayoral figure. The locus of representative force was to stay the municipal council according to the Court, unchallenged by other directly elected institutions such as the mayor. This verdict thus applied to the other *Länder* that had introduced direct mayoral elections as well.

The verdict of the Constitutional Court led to much debate and the Court was heavily criticized (Steinmair 2000: 56; Trauner 2001: 13). It also had the practical implication, that there were now three states with arrangements that were not constitutionally sound. This is remarkable furthermore, because all arrangements of the local authorities are sent to the federal ministry to undergo a constitutionality check by the constitutional department of the federal government. Schwager of the FPÖ was even anxious during the debates in Carinthia that the department would work fast enough in order to allow the directly elected mayors to be introduced quickly afterwards in Carinthia. The verdict of the Constitutional Court led to a situation in which either these three states had to change their Constitutions after the federal Parliament changed the federal Constitution.

It turned out that the verdict of the Constitutional Court could not stop the process of the introduction of direct mayoral elections for long. “The political debate had already led to the insight that direct mayoral elections are worthwhile and that it could enrich the democratic practice at the municipal level” (Trauner 2001: 13, translation CG). Politicians in interviews also stated that there was no political will to go against these reforms.

“It did play a role that we were debating a local phenomenon, where different majorities had made it known that they wanted this reform. That is also democracy. Should one then say ‘we [at the national level, CG] don’t want that’? It does not work like that. They did not make any gigantic mistakes” *SPÖ Respondent*.

“Of course, people consider the effects of a reform on the federal level. And there were none, no big ones at least, so it could be introduced. [...] Once a proposition is on the table, everyone begins to calculate. What is the upshot? What does it mean? At the same time, these things are not easily calculated” *ÖVP Respondent*.

“These developments always run in cooperation with the state level representatives through cooperating groups of the State Parliaments [*kooptierende Landtagsgruppen*, CG]. You just check what is in line with state politics. [...] There was no real debate about the matter” *SPÖ Respondent*.

“At the federal level, nobody had the guts to go against this if the *Länder* really wanted the reform. It would only play into the hand of Haider and populism” *ÖVP Respondent*.

The consensus at the national level was, that this was a matter of the states and that the federal government should make direct mayoral elections possible, but not proscribe them, if this was desired by states. Another fear of the ÖVP and SPÖ was, that voting against this reform would lead to another boost for the Haider-led FPÖ. Of course, the reform did not happen without debate, but much of the debate already took place in the commissions of Parliament.

“It is quite common that sub-commissions are formed because there are so many issues to be dealt with in the regular commissions. In this case the issue came from Tyrol, so it was logical that Niederwieser was asked to lead the commission” *SPÖ Respondent*.

At the federal level, two topics dominated the debate with respect to directly elected mayors: the procedural aspects of directly elected mayors and the general effects one could expect from the reform (*Stenographisches Protokoll, 168. Sitzung des Nationalrates der Republik Österreich, XVIII. Gesetzgebungsperiode, Mittwoch, 15., und Donnerstag, 16. Juni 1994*) The procedural aspects were manifold, such as what parts of the institution should be fixed at the federal level and what parts could be left up for local determination. What should be done if no candidates presented themselves? Should something be done about the exact powers attributed to the mayors? Should there be a specific procedure for dismissal? What should be done in regard to the election of mayors of a minority party?

The importance of the general effects was argued for most urgently by the *Grünen* and the *Liberales Forum* (Liberal Forum), two small parties in the *Nationalrat*. They both stipulated that they viewed this as an unwanted move away from representative democracy towards a presidential system. Both argued that the discontent (*Politikverdrossenheit*) of the people, was actually discontent with political parties (*Parteienverdrossenheit*) and that this reform was not the best remedy against that ailment. The arguments in the other direction prevailed.

“The call for reform came from the municipalities themselves, but also from citizens. They wanted to deal with individual persons. The issue was a strengthening of the personal aspect of elections. Citizens asked themselves the question whether they trusted someone or not, when looking at the individuals on the party lists” *SPÖ Respondent*.

The FPÖ stipulated that the process of direct mayoral elections had no obvious detrimental effects on local politics: it did not lead to chaos in local politics as the experiences of Carinthia and Tyrol showed particularly. The SPÖ casted its doubts and argued against the FPÖ framing, that this should be seen as ‘fixing’ the Constitution, but also stipulated the role of citizen support. The ÖVP also casted doubts, but argued that the supportiveness of the electorates in the

Länder that already introduced directly elected mayors in combination with the high turnout rates at the first direct mayoral elections (up to 90%) spoke in favor of the reform.

Another noteworthy aspect was, that part of the debate focused on direct elections of Provincial Governors on the one hand and the Federal Chancellor on the other hand. The Haider-led FPÖ was constantly steering the debate in this direction, due to the facts that they were a party traditionally focused on strong leadership and that they expected electoral from such a move (or at least a better chance at electoral success). The other political parties would have no part in this debate.

The debate in the *Nationalrat* was a theatrical performance much like those in the State Parliaments. Despite hesitations formulated by the SPÖ and ÖVP, it was clear that they would vote in favor of reform, as would the FPÖ that was notably more positive. Only the small parties of the *Grünen* and the Liberal Forum would vote against reform, but that had no effect on the end result. There were no arguments (that would convince voters) that could be used against direct mayoral elections during the debate, and the two slightly unwilling parties (ÖVP and FPÖ) knew this. In the *Bundesrat*, there was also no notable resistance against the reform, so directly elected mayors were made possible at the federal level with an overwhelming majority (*Stenographisches Protokoll, 588. Sitzung des Bundesrates der Republik Österreich, Donnerstag, 23. Juni 1994*).

“The *Bundesrat* did not have much to do with reform” *FPÖ Respondent*.

“I was not in favor of direct mayoral elections. I also made this known in the *Landtag* [...] in response to my critique they told me ‘the train has left the station’. All federal states around us have direct mayoral elections, we cannot stop it anymore. [...] Sometimes you have to accept that there is a clear majority for a proposal that you do not agree with yourself [and vote to support that proposal, CG]. To accept another decision than the one you would take yourself is also democracy” *ÖVP Respondent*.

The end result reached in 1994 (*BG Novelle of 8-7-1994, BGBl 504*) was a constitutional provision that mayors are elected by the municipal councils, but that the states could introduce directly elected mayors with a state constitutional provision. An exception was made for Vienna, which was not allowed to introduce directly elected mayors because of its exceptional status as a city-state. The provision was to start working on the 9th of July 1994.

Most other states follow

“It is called Xerox-legislation that *Länder* completely copy each other’s legislation. But on the other hand *Länder* also arrange things completely different” *SPÖ Respondent*.

After the Constitution was changed, the first state to spring into action was Salzburg. They were already in the process of introducing direct mayoral elections when the Constitutional Court came with its verdict. So after a necessary stop, they now restarted this process. This led to a decision on the 23rd of June 1994 to introduce direct mayoral elections in the entire state except for the capital of Salzburg (Salzburg followed later with a reform in 1997, that led to direct elections in 1999). In Salzburg the SPÖ, FPÖ, and *Grünen* were enthusiastic, some even ecstatic, but the biggest party (14 of 36 seats), the ÖVP, was not in favor of direct mayoral elections (Thaler 2008).

The main fears (of all parties) according to Thaler (2008: 24) were, that the parties feared that they would lose their position when the strongest personalities were placed on a separate ballot (so that they could not get a bonus for a good main candidate). This would mean populism instead of ideology as a trademark of candidates. They feared money playing a bigger role in politics (businessmen with much money going for a position), and also cohabitation.

However, due to a pact between ÖVP and FPÖ, the SPÖ lost its mayoral position in Salzburg on the 4th of October 1992. This election also had a low turnout of 55%. These facts led to reconsideration within the SPÖ, and after long negotiations was the ÖVP willing to change its position on the issue.

Tyrol and Carinthia had to agree upon a state constitutional provision in line with the new federal constitutional provision. In Tyrol this was dealt with quickly and a new state Constitution was agreed upon on the 7th of July 1994. There was one exception in the case of Innsbruck, which did not get direct mayoral elections. Carinthia introduced a new state Constitution in 1996.

In 1996 (on the 20th of September) Upper Austria also introduced direct mayoral elections. The debate on the matter took place on the 4th of July 1996. The result was a unanimous vote in favor of the reform by the three parties represented in the *Landtag*: the ÖVP, SPÖ, and FPÖ. Again, this was to be expected considering the negotiations that had taken place in the committee commissioned with the topic. Friedrich Bernhofer (ÖVP) noted that the commission did extensive work in comparing the Upper Austrian situation to those in the other four states that had introduced direct mayoral elections in Austria, but also Bavaria. Mario Mühlböck (SPÖ) noted that it would mean more democracy for Upper Austria. There was some critique from *Landesrat Achatz* (FPÖ), who would have liked the mayoral elections to be 'party free', that is, that candidates could also participate without backing of a political party. The latter was the case in the proposition at hand. However, this did not alter his general support for the reform, nor that of the political parties.

After Upper Austria, Vorarlberg – the state that had already experimented with direct elections in an earlier moment in Austrian history – was the next *Land* to spring into action in 1998. The State Parliament was made up out of four parties, the ÖVP (20 seats), FPÖ (7), SPÖ (6) and the *Grünen* (3). In Vorarlberg lively debates took place with regard to direct mayoral elections. Manfred Dörler of the ÖVP noted that it was no easy decision for the ÖVP, considering the

mixed responses from so many mayors in Vorarlberg. Decisive in the process was an opinion poll by a newspaper that showed 83.5% of the people in Vorarlberg to support direct mayoral elections. This was so overwhelming a figure that something needed to be done. Adolf Concin (ÖVP) also remarks that he himself was a clear opponent of the reform, but was surprised by that opinion poll in 1999 that showed a clear majority in favor of direct mayoral elections. In 1999 the legislation based on the state constitutional amendment was discussed in the State Parliament of Vorarlberg. In Vorarlberg the SPÖ and the *Grünen* were against the consensus reached between the ÖVP and the FPÖ, but the latter two had enough seats to get the two-thirds majority needed for the reform – even though Helmut Batlogg of the ÖVP voted against the party line. There was discussion about this, because no unanimity was reached and unanimity was seen as desirable, but the ÖVP simply retorted that the SPÖ and *Grünen* were unwilling to participate in any normal way, so that this way of getting a two-thirds majority would suffice for them. The solution in Vorarlberg was not to prescribe direct mayoral elections, but to leave the final decision up for the municipalities to make.

After the introduction in Vorarlberg the process stops, despite debates taking place in Lower Austria and Styria about the introduction of direct mayoral elections. In Styria, the *Bündnis Zukunft Österreich* (Alliance for the Future of Austria – a split off of the FPÖ) started to demand the *Direktwahl* in 2006 – but they did not pass the threshold to get into the State Parliament in 2005. The SPÖ in Styria was vehemently against directly elected mayors (Steininger 2004: 246). Later, in 2006, the ÖVP and the SPÖ agreed upon a parliamentary commission that should look at constitutional reform under the heading of the ‘*Steiermark-Konvent*’ (Styria Covent) to which the directly elected mayor would belong. Although the process had some successes (such as the ending of the *Proporz* system at the state level) and it looked like it could come to a wider reform of the state Constitution with respect to municipal elections, the SPÖ and the ÖVP did not manage to negotiate a broader compromise and the reform process stopped. In the *Landtag*, the ÖVP has remarked that it felt it to be a shame that no direct mayoral elections exist in Styria as of yet, such as by mouth of the ÖVP leader Christopher Drexler on the 21st of April 2009.⁴¹ After this, a *Kronenzeitung* poll in Styria early in 2010 showed there to be around 70% support for direct mayoral elections, but this has not led to follow up by political parties.

In Lower Austria, so far no party had taken any steps to introduce direct mayoral elections in 2004 (Steininger 2004: 246). After that – until now – 2012 – the single instance found is the call of the FPÖ by mouth of Waldhäusl. Waldhäusl called for direct mayoral elections in the *Landtag* meeting of 11th of December of 2008, but without result. The 2008 state election led the FPÖ to be the 3rd biggest party, winning six seats, but this is nothing compared to the (unwilling) 31 of the ÖVP, or even the 15 of the SPÖ. The *Grünen* are the fourth party with four

41 It has to be remarked that the ÖVP lost three seats in the 2005 elections (from 27 to 24 seats) whilst the SPÖ won six seats (to end up with 25 seats). This could explain the sudden drive for popular (at least as proven in other states) reforms such as the directly elected mayor.

seats in Parliament. The call of the FPÖ did not even lead to a response in the *Landtag*, so it is safe to say that direct mayoral elections are not a hot topic at this moment in Lower Austria.

The reform process aftermath

After the introduction of direct mayoral elections in several states, small changes have been implemented.⁴² Some of these changes were discussed above. Sometimes changes have been debated but not implemented. In Tyrol, the decision to have no direct mayoral elections in Innsbruck led to a consultative referendum in Innsbruck in March 1999 in which 72.9% of the voters called for direct mayoral elections. However, even before the referendum took place it had become clear that there was no two-thirds majority in the *Landtag*, so the reform could not take place (Trauner 2001: 17). Only in 2010 did the reform process get seriously underway again, with the prospect now being that direct mayoral elections in Innsbruck will take place for the first time in 2012.

In terms of the effects of the reforms, we can refer to several effects, but we have to keep in mind that there are variations between *Länder*. Thaler notes for Salzburg, that the mayoral elections led to shifts. Traditional ÖVP and SPÖ municipalities suddenly got SPÖ and ÖVP mayors respectively (Thaler 2008: 30/31). The introduction of directly elected mayors thus led to more variation in the possible outcome of the mayoral election. Traditionally being the biggest party did not result in electoral success in terms of the elected mayor. In terms of women and younger persons the Salzburg experience is meager at best. Only in the 2007 electoral round did 3 women manage to win a mayoral position (Thaler 2008: 38) but those were the first women to win in direct mayoral elections in Salzburg. However, these experiences are to be set against experiences in other states where there is mention of more younger persons and women becoming mayor.

In many states the argument was heard that the introduction of direct mayoral elections could lead to situations of 'cohabitation', which would cause problems. The fear may not have been completely illogical considering the lack of experience with such settings in Austria. In reality, no big problems developed with mayors that were not backed by a majority in the council (Steininger 2006: 996).

"The fears for cohabitation did not materialize. Cohabitation does happen, but the consequences are not bad" *ÖVP Respondent*.

"Cohabitation turned out fine" *Gemeindebund Respondent*.

"The directly elected mayor is consensus-oriented. He has to, because often he has to seek a majority" *FPÖ Respondent*.

42 For the specific legislative arrangements, see, for instance: Trauner, G. (2008). *Die Direktwahl des Bürgermeisters*. Wien, Manzsche Verlags- und Universitätsbuchhandlung.

“Changes happen more than before. In 96% of the cases [not meant literally, CG] in which the mayor does not keep in touch with his electorate he will be voted out of office” *ÖVP Respondent*.

The effects of the introduction of direct mayoral elections (and other changes, these were not always easy to separate in interviews) are interpreted differently. Some note no big changes.

“The political culture of Austria has not changed because of the reform” *SPÖ Respondent*.

“Basically, nothing has changed in the political culture of Austria” *SPÖ Respondent*.

“The general view is: ‘things are like before, it was not a bad move’. The fear was that there would be local emperors, but contrary to this expectation this might be less the case than before. Now the mayors have to talk and negotiate to get something done [where they could count on majority support in most cases before the reform, CG]” *SPÖ Respondent*.

Others do, but they specify the change so that it can be viewed as a distinct comment, separate from the specific reform:

“The party dependency has been brought back in recent years. The political culture has changed. It used to be more of a class struggle. People feel it. These changes have been improvements of politics, and that is how I call them” *SPÖ Respondent*.

Some respondents expect the process to continue.

“Direct mayoral elections will push forward, but it will take time” *FPÖ Respondent*.

5.2.3 The introduction of direct mayoral elections: formal procedure, political actors, and situational circumstances

The formal reform procedure

The formal reform procedure seemed quite simple at first. A state constitutional change requires a two-thirds majority in the respective *Land* deciding the matter. However, in practice, the reform process was complicated because the reform was brought to the Constitutional Court and this Court ruled the reforms in the first three *Länder* unconstitutional. The reforms went against the basic principles of Austrian constitutionalism. Because of this the *Nationalrat* and the *Bundesrat* got involved.

The federal Constitution had to be changed to allow states to introduce direct mayoral elections. A change of the federal Constitution can be arranged in one round of voting in both

federal Houses of Parliament. Of these two Houses, the *Nationalrat* was the most important in this process, as it was a process in which the *Bundesrat* did not have a veto. The *Bundesrat* could only delay the process of constitutional amendment. In the *Nationalrat* a two-thirds majority was required to pass the legislation. After this was done, the matter was once again in the hands of the *Länder* that now had to pass the directly elected mayor with a two-thirds majority in their State Parliaments. Although there were possibilities in the different states to use direct democratic instruments (Poier 2010), different direct democratic instruments did not play an important role in the reform processes regarding directly elected mayors in the way that they did in Germany.

The actors in the reform process

Political parties

In Austria, there is considerable consistency in the positions of the political parties in different states. In general, the FPÖ has been a strong proponent of direct mayoral elections, in all the *Länder* but also in the *Nationalrat*. The FPÖ has an ideological preference for strong leadership and more presidential style democracy on the one hand, but also calculated they could gain because of the introduction of direct mayoral elections, as it would substantially increase their chances of mayoral positions on the other hand. In the system as it was, the FPÖ was often a marginalized party: there were electoral hurdles (which they did manage to take in most instances, but occasionally they did not) that often prevented them from participating in government. When they did manage to get into councils, the informal rule that the biggest party would provide the mayor prevented them from getting the highly influential mayoral position in most municipalities.

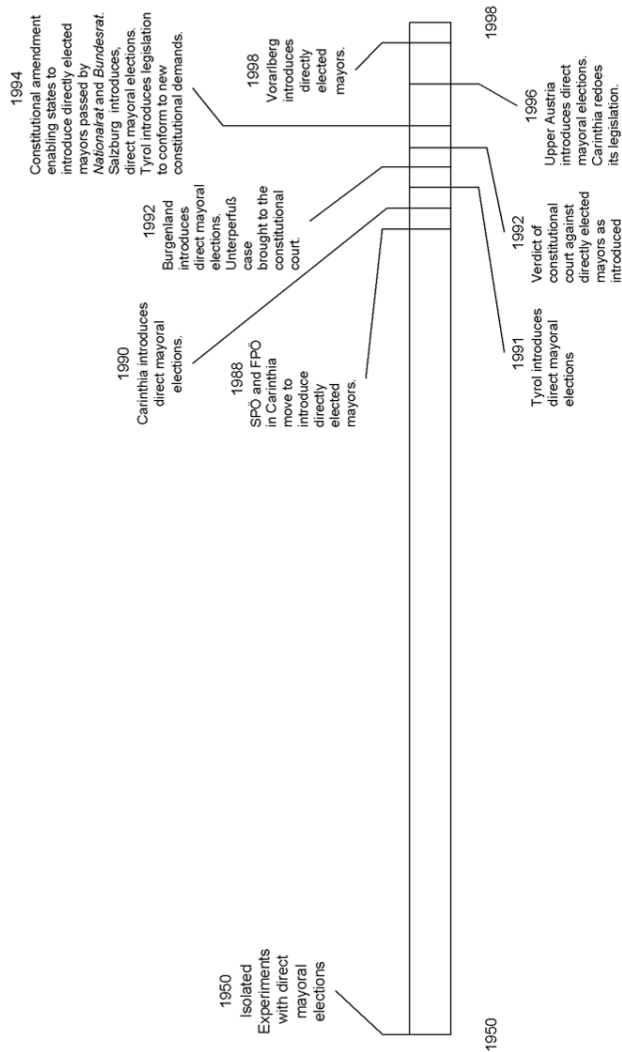
“The rigid party-state in Austria needed to be broken open. That was not possible before. Red and black are like a magnet [SPÖ and ÖVP, CG]. [...] As a party you couldn’t get in, but you might as an individual” *FPÖ Respondent*.

The ÖVP and SPÖ play a mixed role. These parties often both had to agree in order for the reforms to be passed, because of the sheer size of the votes they jointly received. Although we have seen that there is a development in the direction of a multi-party system, Austria has long been a quasi-two-party system (Gerlich 1987). However, it was rarely the case that both parties were enthusiastic about the directly elected mayor.

“In general the weaker parties in the *Länder* were in favor of the reform” *SPÖ Respondent*.

Although there are notable exceptions, in general the ÖVP has been slightly more positive towards the directly elected mayor than the SPÖ. This can perhaps partially be explained from

Figure 5.1 Timeline introduction direct mayoral elections Austria



the (Austrian) Christian-democratic focus on the local communities. At the same time, even now not all state ÖVP branches have supported the reform so far.

“Strategic considerations were debated in the party. [...] But at the same time the consideration was also that this should be something that people could decide on themselves. [...] Party chairman Herbert Koch was also in favor of all sorts of new things. And it was not detrimental that direct mayoral elections had already taken place” *SPÖ Respondent*.

For the SPÖ, the hesitance can be placed in line with the Social-Democratic emphasis of the importance of the council as a more inclusive body of representation. This same claim can also be made for the *Grünen*, that mostly opposed the introduction of direct mayoral elections because of insufficiently developed proposals – not a general disliking of direct democracy (as they themselves put it).

The SPÖ has taken the lead in two instances. In Carinthia, it was the first party to propose directly elected mayors in the *Landtag*, and in Salzburg it was also a driving force of the reform. In the other instances it was not. The case of Salzburg can be contrasted with the (unusual) position of an unwilling ÖVP, although the ÖVP was not exactly positive about direct mayoral elections in Vorarlberg either. The position of the federal party-branches is clear: not one party dared to stop a reform that produced no serious problems so far, was mainly a matter for local politicians to deal with, and was supported by large majorities of the people, so they changed the Constitution quite easily.

The introduction of directly elected mayors also has to do with demands for higher accountability (Fallend 2011: 187 - Fallend refers to Steininger 2006). In many instances, references were made to *Politikverdrossenheit* and *Parteienverdrossenheit* when arguing why a party in Parliament would vote in favor of a reform. However, interviews also showed the fear of electoral gains of the FPÖ to be a powerful motivator for reform. Although that does not say anything about true causes of the growth of the FPÖ.

“It is basic knowledge, an axiom: when there is populism, you go along with it. The newspapers will pick an issue up, the opposition will go along with it. These issues always arise shortly before elections. If there are parties that are in favor of such reforms and you do not go along with it, you will be punished in the elections” *ÖVP Respondent*.

“The FPÖ grew so much, because of the issue of foreigners and because of the privileges that politicians enjoyed, not because of direct mayoral elections” *SPÖ Respondent*.

Individual persons

In the reform process of direct mayoral elections there are of course numerous individuals that play a role. A highly influential role was played by Jörg Haider in the reform process. Although scolded as a parliamentarian in the *Nationalrat* during the reform process (also because of his attempts to make a connection to elected *Landeshauptleute*) he managed to turn the FPÖ into a credible alternative for voters dissatisfied by the traditional *Großparteien* (ÖVP and SPÖ). He did so particularly in his native Carinthia. As a charismatic populist leader Haider managed to win votes and convincingly campaigned against the SPÖ and ÖVP as power-driven, nepotistic parties that had lost touch with the people. Because of this, the parties felt that they had to do something as they noticed their power base slide away from underneath them. Fear to lose more voters to Haider was a prime mover for politicians from the SPÖ and ÖVP.

Connected to the role of the *Gemeindebund*, which is discussed below, the role of Rudi Kores is also worth mentioning. As the head of the *Gemeindebund* in Carinthia, he had an influential position in the reform process and helped to further the reform process in Carinthia.

Other actors

The *Gemeindebund* thus played an important role in the introduction of directly elected mayors in Austria. The *Gemeindebund* is a union of municipalities. It represents the interests of municipalities. Coincidentally, it is traditionally the mayor that functions as the representative of municipalities in contacts with external partners. This means that mayors are also representatives of municipalities at the *Gemeindebund*. These mayors saw a possibility to further enhance the mayoral position and were thus generally supportive of direct mayoral elections. Logically, the *Gemeindebund* was also supportive. This meant that the main representative and lobby organization for municipalities supported the reform, which made it even more difficult for the national Parliament to even consider not introducing legislation to make direct mayoral elections possible. It created a situation in which municipalities wanted the reform and different *Länder* wanted the reform, so it was obviously a well supported reform by local institutional partners.

In Austria, as in Germany, there was a role played by *Mehr Demokratie*. *Mehr Demokratie* campaigned for more democracy in Austria, propagating the introduction of multiple direct democratic instruments – or more direct democratic instruments, such as the directly elected mayor. The role of *Mehr Demokratie* has not been mentioned in interviews as being very important. Still, it is noteworthy that there is such a lobby organization for the enhancement of democracy in Austria.

A role has been played by the media, in particular the tabloid *Kronenzeitung*. The *Kronenzeitung* is part of the biggest media-conglomerate in Austria and is well connected. During the 1980s this conglomerate (which is of make-or-break importance for many public careers in Austria) started to take a more populist-campaigning stance.

“Kronenzeitung is an opinion builder. The success of campaigns often depends on the Kronenzeitung. When you have direct democracy, you have to take account of with Kronenzeitung” FPÖ Respondent.

“The media were really in favor of direct mayoral elections and direct democracy. Very much in favor of these reforms. It would make it easier for them to make news. It is a shift towards the American model. Allows for easier one-liners” Grünen Respondent.

This, for instance, included opinion polls both nationally and in the federal states. The more active campaigning of the *Kronenzeitung* changed the political landscape and made it more difficult for parties to ignore calls for democratic reforms.

General public

The opinion polls such as those by the *Kronenzeitung* had an influence in Austria. During the reforms of the first states to introduce direct mayoral elections there was not so much debate about the exact figure of support amongst the people. At that point in time politicians were noticing a general change in the attitude of people towards politics. Politicians noticed *Politikverdrossenheit* and considered that it could in fact be *Parteienverdrossenheit*. The trends that politicians saw were supported by such facts as the lowering turnout at elections, but also the rise of (new) parties that had a notable populist flavor to them, most importantly the *Grünen* and the FPÖ. Keep in mind, this is not to say that no ideological considerations played a role, such as a desire to provide for the best possible local administrations (as shown by the references to German states that had experience with directly elected mayors or were introducing direct mayoral elections).

These facts needed to be responded to and led to reform in several states. After these initial reforms, *Politik-* and *Parteienverdrossenheit* continued to play a role in the other states, but the aspect of popular opinion became increasingly important due to federal comparison. In Vorarlberg, there was initially no inclination to introduce direct mayoral elections, until a poll by *Kronenzeitung* showed such an overwhelming majority in favor of direct mayoral elections that ÖVP-politicians felt that they had to respond by making reform possible. Increasingly, there is pressure in Styria and Lower Austria to introduce directly elected mayors in their local Constitutions, pressure they have been able to fend off so far, but in all likelihood the pressure to reform will remain as there is still a sense of political discontents and a sense of dissatisfaction with political parties in general.

Situational circumstances

There was not one shocking event that set the reform process in motion. In general, the increasing electoral volatility, the rise of the *Grünen* and particularly the FPÖ, and the talks of *Politikverdrossenheit* and *Parteienverdrossenheit*, played a role in Austria. This was more akin to a lingering crisis. There was a sense that something needed to be done, as in the Dutch reform case of the elected mayor. What did matter was the federal structure of Austria. The reform of elected mayors was not something that the national government wanted to stop, nor did the federal government want to enforce its introduction. Instead, they allowed the states to choose themselves. Many states did follow suit, after pressure from opinion polls mounted. There was, in some sense, a domino-effect similar to Germany, but in Austria the reform process has stopped short of all the states introducing direct mayoral elections.

It is interesting to note, that in debates there were references to the (South) German states and Switzerland, both bordering Austria. In these states direct mayoral elections had been a normal part of government for a long time, and this was seen as inspiration for the Austrian states. Importantly, the Austrian states also noticed the wave of introductions of direct mayoral

elections in Germany, and saw this as a sign of the times to introduce this possibility in their respective *Land* as well.

5.2.4 Preliminary conclusions

The introduction of direct mayoral elections in Austria is a process that started early in the 1990s and is still going. The first mover states, Carinthia and Tyrol, had various reasons for the introduction of direct mayoral elections, but one important reason was the rise of the FPÖ and the fact that the FPÖ was calling for these reforms. Not answering to these demands was seen as a political risk, something that could further strengthen the FPÖ. It helped that Germany was experiencing a similar move towards the introduction of direct mayoral elections. More importantly, the *Gemeindebund* was supportive of the move, not least because the representatives of the municipalities in the *Gemeindebund* were mainly mayors.

After the first experiences with direct mayoral elections were positive, and the Constitutional Court had ruled against the practice in the shape it had taken, the federal government did not see it worthwhile to stop the introduction of direct mayoral elections and made direct mayoral elections constitutionally possible. The ÖVP and SPÖ considered the potential electoral ramifications in the entire country (more votes for the FPÖ nationally) and saw it as a local matter. It did not change the informal practice in Austria all that much either, as the leading candidate of the biggest party normally became the mayor in a municipality.

5.3 THE INTRODUCTION OF A CONSULTATIVE REFERENDUM IN AUSTRIA

5.3.1 Introduction and background to the reform process

The Austrian Republic traditionally had a provision for both *Volksbegehren* (initiative) and *Volksabstimmung* (deciding referendum), but despite the fact that these instruments existed, they were not really used. This led to a situation in which Austria was a state that had ample direct democratic instruments, but because of a culture of non-use, this direct-democratic Austria only existed on paper. The explanation for this lack of use can be found in the political culture of Austria. According to Fallend, there is still a tradition of elitist politics in Austria: “Direct democracy is not practiced because of the (mis)use of its instruments by parties, populist campaigns by the yellow press, and the underdeveloped character of civil society.” (2011: 185).

The *Volksabstimmung* was already present in the Constitution of the First Republic in 1920. In this Constitution it was stated that all constitutional amendments in Austria should be held up for a referendum. Later this provision was changed so that only in the case of a complete or fundamental change (*Gesamtänderung*) of the Constitution a referendum was obliged. To this provision it was added that in the case of a simple constitutional amendment – one that did not constitute a *Gesamtänderung* – a third of the members of the *Nationalrat* could demand a referendum be held. Finally, a referendum can be demanded by a simple majority of the

Nationalrat in the case of normal (non-constitutional) legislation (Müller 2006: 109). So far, only two *Volksabstimmungen* have taken place in Austria at the national level. In 1978 one has taken place on an atomic power plant that will be discussed in more detail below and in 1994 one has taken place on the membership bid of Austria for the European Union. The first was a referendum requested by the *Nationalrat* the second (EU) referendum was required because entry to the EU constituted a fundamental change to the Austrian Constitution.

The *Volksbegehren* was also a part of the Austrian Constitution of 1920 (Müller 2006: 110). However, until 1963 there was no normal legislation arranging the way these initiatives should take place in practice. This made the right to initiatives essentially mute. In 1963 legislation was developed that allowed citizens to present a legislative proposal to the *Nationalrat*, provided the initiative was signed by 200.000 voters. In 1981 this number was lowered to 100.000 and in 1989 a provision was created that allowed voters to formulate an initial demand for legislation on the base of 0.1 percent of the population, after which eight days remain to get enough signatures for a proper initiative. Paradoxically, precisely those initiatives that did not manage to get much support in terms of signatures collected were the ones to be translated into legislation more often than those that gathered much support. In general, the number of signatures compared to the size of the electorate is low (Pelinka and Rosenberger 2007: 87). However, one should also take into account the agenda setting and sensitizing effect of the instrument according to Pelinka and Rosenberger (2007: 87). At the same time – probably due to the legislative changes that have made it easier to organize a *Volksbegehren* and the increased population of Austria – the number of initiatives that have been attempted has increased since the 1960s when they were first introduced. Since the 1960 there was a gradual increase of the use of direct democratic instrument in general. This increased usage led to a series of reforms in the 1980s, to which we come below.

5.3.2 The reform process: introducing new referendum possibilities in Austria

The history of A-Kraft and the rise of the Grünen

As said, two forms of direct democracy at the national level already existed (at least on paper) since the 1920s. Due to the law of 1963 organizing *Volksbegehren* was made possible and this happened. In the 1960s the women's movement and the green movement started to develop as well (Pelinka, Gottweis et al. 1998). These developments took place against the background of ÖVP and especially SPÖ political dominance, where in 1971 the SPÖ got an absolute majority for the first time (Gehler 2006). The leader of the SPÖ in this period was Bruno Kreisky, who already became Federal Chancellor in 1970. In March 1971 the decision was made to build a nuclear power plant in Zwentendorf an der Donau. The plan was to build a first power plant in this location and that it should be followed by several other power plants. It would be the first nuclear power plant in Austria. This decision immediately led to criticism amongst opponents of nuclear power, especially the planned plant in St. Pantaleon led to the organization of initia-

tives against it (Pelinka 1998; Pelinka, Gottweis et al. 1998: 165). These initiatives, in return, led to an information campaign by the government to explain the reasons for and benefits of the planned plant in Zwentendorf. However, this campaign to support atomic energy became a trigger for the different organizations against atomic energy to unite themselves and use the government information campaign against the government itself. The union of protest organizations was called the *Initiative österreichischer Atomkraftwerksgegner* (Initiative of Austrian Opponents of Nuclear Energy). This organization managed to mobilize many people, even more so because the *Kronenzeitung* also developed a massive campaign against nuclear energy. At a certain point there were around 500.000 active opponents amongst whom many students.

These opposition movements led the government to be increasingly insecure about the course to follow. Especially because the (at that point still very small) FPÖ was taking position against the nuclear plants and the ÖVP was not clear about their position. Because it was such a controversial issue and the SPÖ seemed to stand alone, the idea of a *Volksabstimmung* became possible again (it had been suggested by opponents earlier in the debate around Zwentendorf). The decision was made to hold a binding referendum on the activation of the nuclear power plant at Zwentendorf because the SPÖ did not want to alienate their electorate by a go alone strategy on this matter (Pelinka 1998). Considering the political culture of Austria, they felt the issue needed broader legitimacy than could be provided at the time.

On the 5th of November 1978 a referendum was held and at a turnout rate of 64.1% the opponents managed to stop the nuclear plant from being put to use. They won with 50.5% of the vote (a difference of 30.000 votes). For proponents of the power plant, most notably the major interest groups, the social partners, this was a decisive waste of money (the plant had already been built) and they feared power shortages. At the same time, it was a painful decision for the Kreisky government and it is seen as a decisive moment in his 13 year rule as Federal Chancellor. Kreisky ran an election campaign in 1983 but only wanted to stay on as a Federal Chancellor with an absolute majority, which he did not manage to get. Shortly after the rejection of the Zwentendorf nuclear plant, the Kreisky government developed legislation to ban atomic energy from Austria in general. This led to two *Volksbegehren* in 1980, one in favor of the power plant, which was immediately followed by an initiative of the opponents (Pelinka and Rosenberger 2007: 90).

A non-eventful non-reform

The result of the referendum was painful for Kreisky and the SPÖ, but a great success for protest movements. After this result several events took place. First, there was a direct democratic reform to lower the number of signatures required in order to form a *Volksbegehren* to 100.000. The thought was, that it should be made easier for citizens to voice their opinion earlier in the process, because a lack of resistance had caused this nuclear plant to have been built despite a lack of support amongst Austrian citizens.

As noted, Kreisky did not win an outright majority in the next election and after the elections the SPÖ was forced to join a coalition government with the FPÖ. In the run up to the elections it had seemed that different environmentally oriented protesters and protest groups would be able to join forces in a green party, but this did not happen. The green cause remained an issue though, because of increased sensitivity for the issue as well as further government plans for other power plants and non-environmentally friendly acts. Before the elections of 1986, there was another attempt to create a green party that did not succeed. Instead, several of the leading figures of the green movement decided to join an electoral list before further developing a green party. They managed to pass the 4% hurdle and entered the *Nationalrat* with 8 seats in 1986.

The entrance of the *Grünen* in the *Nationalrat* might not have come as a surprise to the ÖVP and the SPÖ, but it still caused a stir. Furthermore, in the 1986 election, the FPÖ also gained 6 seats to claim a total of 18 seats in the *Nationalrat*. From this, it became clear that the traditional two parties were losing ground to other political movements. Something had to be done in order to become more responsive to the Austrian people in general. This something took the shape of a constitutional amendment process that entailed many different aspects of the Austrian Constitution. A difficult topic, for instance, was the question of what to do with the voting rights of people that live in Vienna (for work) but in the weekends live with their families in more rural areas. Other issues included personal liberties and arranging for the existing direct democratic instruments to be made more readily available. One aspect was thus to make the *Volksbegehren* easier to use.

During the debates on the matter in the *Verfassungsausschuß* (constitutional commission) of the *Nationalrat* the matter was handed towards an *Unterausschuß* (a sub-committee) of the constitutional commission on the 17th of June 1988. This sub-committee was made up out of a representative sample of the parties in the *Nationalrat* and held several meetings, in which consensus was formed. In the debates in the sub-committee Heinz Fischer leader of the SPÖ in the *Nationalrat* and Michael Graff of the ÖVP developed an *Initiativantrag*, a legislative initiative by Members of Parliament, which managed to get subsequent support in the sub-committee and the commission.

“The idea came from political scientists researching democracy. There was an ÖVP series on politics in the *Länder* and the *Volksbefragung* was already an instrument at the state level” *ÖVP Respondent*.

Of course, the fact that the president of the constitutional commission (Fischer) and an ÖVP-member (Graff) came to such a proposal means that there had been internal consultation within the political parties and that these consultations had not led to problems.

“Practically everything that is discussed in regular gatherings of Parliament has been pre-debated in the commissions. Because the transcripts of the meetings differ [there are no literal transcripts, CG] the main labor is done in these commissions. Citizens do not see anything of this labor [...] when the issues arrive in the parliamentary meeting they have been decided upon” *SPÖ Respondent*.

“The commissions, that is where everything happens” *SPÖ Respondent*.

On the 24th of November the sub-committee made their results known in the constitutional commission and already on the 29th of November of 1988 the resulting proposals of the constitutional commission were on the agenda of the *Nationalrat* (*Stenographisches Protokoll 119. Sitzung des Nationalrates der Republik Österreich XVII. Gesetzgebungsperiode Dienstag, 28., und Mittwoch 29. November 1989*). In the *Nationalrat* there was much debate about the whole of the constitutional reform of 1988. Many different aspects of the constitutional reforms led to debate, but there was not much debate about the *Volksbefragung*. It was supported by different parties and did not lead to debate. If there was criticism, it was that the reform did not go far enough, that citizens should be allowed to demand consultative referendums in some way and not just the government. This was stated by Friedhelm Frischenschlager of the FPÖ in the debate on the constitutional reform. The debate focused on many aspects of the reform but not the *Volksbefragung*. There were different amendments to the proposal of the *Verfassungsausschuß* presented in the debate, most of which did not manage to get the required majority. Finally, in the vote on those topics proposed by the *Verfassungsausschuß* – which included the proposal by Fischer and Graff – all parties supported the constitutional amendments (SPÖ, ÖVP, FPÖ and Grünen).

“The *Volksbefragung* was an easy reform because it is non-binding. It did not hurt” *ÖVP Respondent*.

“That the introduction was unproblematic has to do with the fact that the government is not asking anything binding, and it does not have any direct effects. [...] The decisive point is the non-binding effect” *FPÖ Respondent*.

The reform also passed the *Bundesrat* without problems, and in June 1989 the federal government sent a proposal for normal legislation (that was demanded in the constitutional arrangement) to the *Nationalrat*. In the *Nationalrat* the proposal was sent to the *Ausschuß für innere Angelegenheiten* (commission for internal affairs) on the 16th of June, which was then accepted unanimously by the commission and sent back to the *Nationalrat*. In the debate in the *Nationalrat* on the 29th there were no speakers and the proposal for the *Volksbegehrgesetz* 1989 was accepted unanimously.

The reform process aftermath

Since the introduction, there have been no consultative referendums at the national level in Austria. The *Volksbefragung* was translated into local legislation and there have been multiple consultative referendums at the local level (in all *Länder* there is a provision for consultative referendums, and the figures of *Mehr Demokratie* show that these consultative referendums are used more often than actual binding referendums). The reforms that have eased the possibility to organize initiatives have had effect. Pelinka and Rosenberger note that there has been a rise in the usage of direct democratic instruments as well as unconventional political actions (for instance, petitions and demonstrations). They see a rise in the number of citizens' initiatives (*Volksbegehren*) since the 1990s. They do note that the FPÖ is one of the big push factors for these initiatives (Pelinka and Rosenberger 2007: 75).

Fallend agrees that the newly introduced direct democratic and participatory instruments are still not very much used instruments (Fallend 2011: 188/189). At the same time, this claim might need some refining, as he continues: "Unfortunately, political scientists have not studied the practice of direct democracy in the provinces so far, and the public authorities do not record the use of the instruments. Information by the provincial governments and the provincial associations of the municipalities (received in January 2009) points to a very limited use, though" (Fallend 2011: 185). So there are some indicators, but none very strong. Because of this, Fallend argues that it is safe to follow Marko and Poier (2006: 956) in stating that state politics are still dominated by elites of political parties – and that direct democracy is not used because of the (mis)use by parties, populist campaigning (note that this corresponds to the claim by Pelinka and Rosenberger that the FPÖ is the main instigator of initiatives), and an underdeveloped civil society in Austria (Fallend 2011: 185). The same goes for direct democratic instruments at the local level where referendums are organized only very rarely (Fallend 2011: 189).

"It is not really used, which shows that not much thought was put into the reform. Only the opposition constantly proposes them" *ÖVP Respondent*.

"The *Volksbefragung* is an absolutely theoretical construct" *ÖVP Respondent*.

Overall, it seems that there is both something to say for the claim that politics in Austria (even at the local level) is still elite-dominated and the claim that the use of direct democratic instruments in Austria is increasing. For instance, in an interview in Vienna, a politician mentioned the use of local consultative referendums in the run-up to elections in Vienna in an attempt to woo the electorate and these referendums were to a large extent mute because they did not lie in the jurisdiction of the local authorities.

"The *Volksbefragung* has been created in such a way that it paves the way for use as a campaigning instrument. In Vienna in May [2010, CG] there was a *Volksbefragung* about

ten different points shortly before the election. Points that did not hurt but were popular, some issues not even falling under the jurisdiction of the municipality" *ÖVP Respondent*.

So, on the one hand there is more use of referendums in general, on the other hand it is still heavily influenced and coordinated by the political elites. As for the consultative referendum it remains a question to what extent it actually helps and to what extent the same information could be gained from opinion polling. Apparently, at a subnational level, the usage of the instrument is deemed important enough for it to have been used.

5.3.3 The introduction of new referendum possibilities in Austria: formal procedure, political actors, and situational circumstances

The formal reform procedure

The formal reform process was an Austrian constitutional process followed by the introduction of normal legislation on the actual process of a *Volksbefragung*. The constitutional process required a two-thirds majority in the *Nationalrat*, whilst the *Bundesrat* did not possess a veto on the matter. The introduction of the following normal legislation required a normal majority in the *Nationalrat*, whilst the *Bundesrat* did not possess a veto. There was no talk of organizing *Volksbegehren* to introduce the consultative referendum or other such pressures.

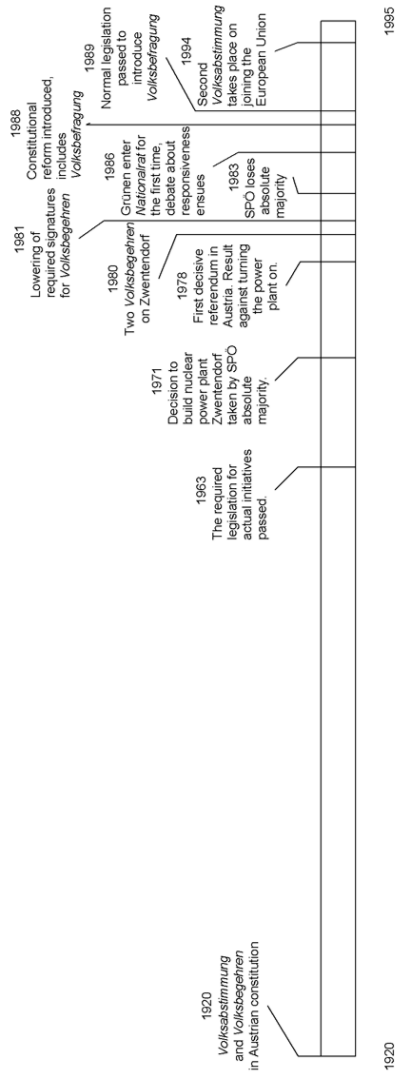
The actors in the reform process

Political parties

Political parties were, on the one hand, influential in the reform process and, on the other hand, not so much. The two *Großparteien* ÖVP and SPÖ rallied behind a proposal by two (prominent) members of the parties to introduce the *Volksbefragung*. As such however, it was no longstanding wish of one of these parties, but something that came up in the *Verfassungsausschuß*.

There were considerations for political parties that led to the introduction of the consultative referendum at the national level. As the history with the nuclear power plant has shown, there was a history of political decisions that led to protests of citizens and in the case of the Zwentendorf power plant, this was a costly miscalculation. Most of these big projects are to be found at the local level, so most of the protests were local in nature. These miscalculations contributed to the development of the Green party in Austria. This meant an extra competitor on the political market, a competitor that managed to get elected in the *Nationalrat* in 1986. A consultative referendum would provide the Austrian politicians with an instrument to prevent situations such as Zwentendorf. It was a solution to the problem of pushing through decisions that might later turn out to be costly miscalculations because of the availability of initiatives

Figure 5.2 Timeline introduction of the consultative referendum in Austria



and deciding referendums. Besides, at a lower level there was some experience. Already in 1973 the first consultative referendum was held in Vienna. It did not lead to big problems.

In interviews, it has been stipulated that the reform was aimed to take some of the power away from the *Grünen*.

“The *Volksbefragung* was a cheap solution. There is no culture for *Volksabstimmung* in Austria, the low turnouts show this. The *Volksbefragung* does not cause pain. Most of the time there will not be a large turnout and if it goes wrong it is never so bad that you can’t go

around the result. So first one determines the question to be posed, and then one can still get around the result" SPÖ Respondent.

That states it quite clearly. The reform was "*eine billige Lösung*" (a cheap solution). It was a reform that did not cost anything politically. It did not really give citizens more rights because it would be up to the *Nationalrat* to demand a consultative referendum. If the results were negative a party could still (in theory) move on as if nothing happened. All in all, it seemed like a reform with no real costs, and potentially big gains if it managed to prevent the *Grünen* from getting a bigger following. The FPÖ, finally, was supportive – more specifically supportive of a version that could be organized bottom-up by citizens – of the reform because it would be a reform that offered them more chance for influence. As we know, the FPÖ was also a big initiator of *Bürgerbegehren* at the local level, so this seems logical.

Individual persons

As far as is to be recollected two persons in particular were of importance in the reform process regarding the consultative referendum: Heinz Fischer and Michael Graff. In the interviews with those that were Members of Parliament at the time, it is especially the relationship towards the *Grünen* that has been stipulated. Unfortunately, Michael Graff has passed away in 2008 so no exchange of information could take place for this study. Heinz Fischer was the leader in Parliament of the SPÖ since 1975, so he was an influential politician within his party. Later he went on to become president of Austria. I have not been able to interview him – or exchange information in another way, but in a meeting of the *Hauptausschuss* (main commission) of Parliament on the 11th of July 2000, he has let it known (in a debate about relationships with the EU) that "It was [...] the intention to solve the problem that in a series of very large projects, sometimes so large as to require legislation – from the hospital in Vienna to the power plant in the surroundings of Hainburg – the citizenry only at the end of the project had a voice in the matter of the projects, after much money had been spent on these projects. In the worst case it came to a "no" after 12 billion *Schilling* were invested".⁴³

Other actors

Considering the importance of the initiative of these two politicians and the relative passivity of the political parties in the process, it should not come as a surprise that there was no real

43 "Er berichtet, dass damals nicht die Absicht bestanden habe, irgendwelche landesgesetzlichen Vorschriften auf die Bundesebene zu übertragen. Vielmehr sei damals beabsichtigt gewesen, das Problem zu lösen, dass in einer Reihe von sehr großen, zum Teil mit Gesetzgebungsakten verbundenen Projekten – vom Allgemeinen Krankenhaus Wien bis hin zum Kraftwerksbau nahe Hainburg – die Bevölkerung erst am Schluss zur Entscheidung per Volksabstimmung aufgerufen wurde, nachdem für diese Projekte bereits viel Geld ausgegeben worden war. Im schlechtesten Fall sei es zu einem „Nein“ gekommen, nachdem bereits 12 Milliarden *Schilling* investiert worden waren" (11th of July 2000 in the *Hauptausschuss*, translation CG)

call for this reform by other institutes. Compared to the already available direct democratic instruments it was a meager instrument. Making initiatives easier for instance can be regarded as a better investment for once time specifically for that reason.

General public

The general public did play a role, but indirectly, through the electoral move towards a green party and the protests against developments and votes against these same developments, specifically Zwentendorf, after they had been paid for. However, as such, the consultative referendum as an instrument has been an idea that was developed by political elites.

Situational circumstances

For the introduction of the consultative referendum at the national level, there are two situational circumstances that influenced the reform process. The first was the vote against tuning on a power station that had cost billions of *Schillings* in the first deciding referendum in Austria at the national level since the Second World War. The second event was related to the first one. *Zwentendorf* was a particular example for the environmental movement at the time and this led to the rise of the green party in Austria. When this party won seats in the *Nationalrat* in 1986, it disturbed the classic power balance in Austria, where there were two big parties and a smaller FPÖ presence. This caused politicians in the ÖVP and SPÖ to reconsider their relationship with citizens, and the institutional structure that shapes this relationship.

5.3.4 Preliminary conclusions

The introduction of the consultative referendum at the national level in Austria was not an eventful reform. It was a reform that was agreed upon between the ÖVP and the SPÖ in the constitutional committee of the *Nationalrat*. This agreement was not surprising, as it did not fundamentally change the balance of power between citizens and politicians. Politicians were to decide on the usage of the consultative referendum after its introduction, so politicians would have the power to formally ask citizens for advice in a referendum, or refrain from doing so.

The consultative referendum has not been used at the national level since its introduction. For some respondents this was clear evidence that it was not a reform that was thoroughly considered. It was rushed into the Constitution in the context of the rise of the *Grünen* and the negative experiences with deciding referendums in the years before the introduction. However, the rise of the *Grünen* has not been stopped because of the introduction of the consultative referendum, as can be seen in Table 5.2.

5.4 COMPARING THE AUSTRIAN REFORM CASES

By comparing these two Austrian reform processes we can distinguish some characteristics of Austrian democratic reform processes. These characteristics will be more structural than when one researches only one case, but not necessarily an explanation for a larger population of democratic reforms in Austria. For instance, the cases researched in this Chapter are all relatively successful reform processes, as the reforms were all passed (to a large extent in the case of direct mayoral elections). With this preliminary comparative analysis question four of the analytic framework will be answered that deals with the commonalities and differences between the reform cases. Like the previous Chapter, the basis for this comparative analysis will be the questions regarding the formal procedures, the actors, and the context of the reforms.

5.4.1 The formal reform procedures in Austria

In the Austrian cases discussed above, there have been different reform procedures. In both reform cases a constitutional change at the federal level was required, which meant that a 2/3rd majority was needed in the *Nationalrat* as well as agreement from the *Bundesrat*. Although, in the two reform cases discussed in this Chapter, the *Bundesrat* could only delay the process for a while and not prevent the reforms completely. As the directly elected mayor was not introduced federally at once, but in phases where each *Land* had to decide for themselves what to do, the reform process also required State Parliaments to act. In most cases a single two-thirds majority sufficed, although in Salzburg and Vorarlberg a referendum is also required in order to change the state Constitution. The process of the introduction of direct mayoral elections and the *Volksbefragung* were thus not extremely difficult for politicians to achieve.

5.4.2 The actors in reform processes in Austria

Austrians will claim their political parties to be anything but responsive, or so it was indicated in interviews. In the cases researched in this Chapter the political parties considered themselves not to have much choice. Both in the reform of the consultative referendum and the directly elected mayors, most of the negotiations took place behind closed doors. In the Austrian practice at the national level at the time the two reforms in this Chapter took place, an agreement between ÖVP and SPÖ was needed. This agreement could be established behind closed doors in the safety of the *Ausschuß*. As the political culture is such that consensus is strived at in these commissions, most of the time the debate about a proposal is about the political parties proposing slight changes that they know have only a slight chance of being accepted. However, they try it anyway, only to vote unanimously or with overwhelming majority in favor of the consensus anyway.

Only when some (near-)unanimous consensus was formed, did the debates at the parliamentary level take place. This makes it difficult to assess the real reasons why certain things were done. However, practically all politicians interviewed in Austria are quite open about the

power-political considerations that played a role. In the case of the consultative referendum, mainly in order to stop the rise of the *Grünen*, and in the case of directly elected mayors, mainly to stop the rise of the FPÖ. Especially the FPÖ in Carinthia was demanding the introduction of direct mayoral elections (and Provincial Governors at that), so some response was required. In both these reform cases the actual reform was not all that influential: the consultative referendum did not give citizens real direct democratic powers, and the directly elected mayor was a mainly local matter in which the mayor was the leader of the biggest party most of the times anyway.

However, because of these pressures, and the opinion polls, referendum results and the airing of these polls and results by the media (most notably *Kronenzeitung*) the existing political elite could not simply lean back and take the bad publicity. They felt that something needed to be done to respond to these demands. It helped that the directly elected mayor had not caused serious problems so far, which made responsiveness easier. For the laggard states that still have not introduced directly elected mayor, arguing against direct elections will become increasingly difficult, although it is also typical that, despite general public support in all the states has been roughly equal (above 70 or even 80%), the parties in the lagging states have not been electorally punished in the local elections in Styria and Lower Austria – which might be an indicator of the weighing of the salience of the issue for citizens ('we want it really badly, but not enough to care').

In the Austrian cases, there were also specific individuals that played an important role. In the case of the *Volksbefragung*, Heinz Fischer (SPÖ) and Michael Graff (ÖVP) played an important role. They formed and coordinated a consensus between the two big parties to introduce consultative referendums and got support for the idea both from their party leaderships and the commission on constitutional matters. Jörg Haider of the FPÖ played an important role in the process of the introduction of direct mayoral elections. He managed to let the FPÖ grow to a sizable party and he was strongly in favor of strong directly elected leaders. Introducing directly elected leaders would provide the FPÖ with a much better chance of claiming leadership positions than would otherwise be the case in Austria, with so many *Proporz*-type arrangements in place. The proposal by Haider to introduce direct mayoral elections could count on support from the *Gemeindebund* led by Rudi Kores. This helped the introduction process move forward.

In both reform cases, there was a role for the *Kronenzeitung*, as the leading newspaper that increasingly became critical of Austrian politics in the past decades. Particular events were used as starting points to launch campaigns. In general, the *Kronenzeitung* has taken a populist stance and is critical of established political forces. It favors showing facts and figures that create issues, such as support figures for direct mayoral elections.

In the case of direct mayoral elections the support of the *Gemeindebund* was important, because it showed that there was broad support for the reform, also amongst municipalities. It

was also noteworthy that *Mehr Demokratie* was actively campaigning for democratic reform in Austria, and it is seen generally as a serious institute and lobby group.

In contrast to Germany, there was no large civil movement to introduce direct mayoral elections or demand the introduction of the consultative referendum. There were large majorities for the introduction of direct mayoral elections as shown by opinion polls, but this did not lead to threats to use initiatives such as in Germany. The response came from the two *Großparteien* themselves in several *Länder*. The two established big parties were worried about the rise of the FPÖ and the *Grünen*, which were getting ever more seats in different Parliaments and decided that something needed to be done to reconnect with voters. The pressure of the general public to reform in Austria has been an indirect pressure. The public pressured political parties by voting for other parties instead of the two *Großparteien* (as shown in Table 5.2 there was increasing electoral volatility in this period), by voting against the wishes of parliamentarians in cases such as Zwentendorf, and through mediation of media such as the *Kronenzeitung*.

5.4.3 The situational circumstances of the reform processes in Austria

The ÖVP and SPÖ had been in power together, alone, and only occasionally with the help of the FPÖ since the Second World War. The entire political structure of Austria, as well as the internal organization of these parties was aimed at the SPÖ and ÖVP ruling (together) and making important (constitutional) decisions together. In both these reform cases something needed to happen that moved the politicians in a way that they would reform the structure that had left them with so much influence over time. Most fundamentally this ‘something’ was the increasing rise to power of other political parties, specifically the FPÖ and the *Grünen*, but this happened as part of a process in which other things happened.

In the case of the consultative referendum this crisis came in the form of the binding referendum on Zwentendorf and the aftermath thereof. After Zwentendorf two things happened. There were further protests against developments considered environmentally unfriendly. At the subnational level there had been votes against already developed plans. Fundamentally, there was the organization of a green movement into a green political party, the *Grünen*. Apparently developing big projects without prior consent from citizens entailed a financial risk and the practice of ex-post permission-asking led to the rise of a new political party. This could potentially be stopped by asking citizens in advance what their wishes were. When the result was non-binding, it would not tie the hands of politicians too much.

The rise of the green party is also a sign of a lingering crisis in the form of *Politikverdrossenheit* and *Parteienverdrossenheit*, two words that start making an impact at the end of the 1980s into the 1990s. These two words do not provide a shock crisis that needs to be dealt with, but politicians do feel that something needs to be done. Turnout is dropping, and people are searching for alternatives that they find with the new *Grünen* party and the traditional FPÖ that was moving in a more populist right-wing direction. This plays an important role in the process of the introduction of the directly elected mayor.

The first states to introduce directly elected mayors all had their own considerations. In general the ÖVP was in favor of locally elected leaders, as was the SPÖ. In the first Land to reform, Carinthia, this was the case because of the rise of the FPÖ in this state. In Tyrol and Burgenland the party positions were more difficult to pin down, but the rise of political discontent played a role. After several states introduced directly elected mayors without serious problems, it became increasingly difficult for other states to stop the process of introducing directly elected mayors in their states.

5.5 DEMOCRATIC REFORM IN AUSTRIA

In Austria, many democratic reforms have been implemented at the subnational level and at the national level since the 1980s. The reforms have been manifold. “Today, all of them [the *Länder*, CG] have binding referendums (*Volksabstimmungen*); only in Tyrol a minimum of participation (50% of the electorate) is required for a valid result. In three and four provinces, respectively, municipalities and citizens (with different quorums) can demand a referendum on a law. Five provinces allow citizens to comment on bills or government decrees. All constitutions have introduced people’s initiatives (*Volksbegehren*) in legislative matters, five also in administrative matters. Citizens may also be asked in a consultative referendum (*Volksbefragung*). There are restrictions, however; taxes or fees must not be taken before the people.” (Fallend 2011: 185). And: “At present, in all provinces (except in Lower Austria and Vorarlberg) municipal meetings to inform local citizens have to be organized at least once a year. In six provinces, citizens may start people’s initiatives” (Fallend 2011: 188/189).

In this Chapter, specific attention has been given to the introduction of the consultative referendum at the national level and the introduction of directly elected mayors in different *Länder*. These reforms have been passed with relative ease in Austria. The introduction of the consultative referendum was particularly uneventful, and the introduction of the directly elected mayor a process that is still moving forward with debates now and then resurfacing in those states that have not yet introduced the reform. Despite the momentary standstill, due to issues of constitutionality, the introduction of directly elected mayors in Austria is still an ongoing process. The reforms in Austria could take place because the institutional structure was susceptible to change. The formal procedure was not too rigid, but allowed change to happen. However, even when the procedure is not too rigid, political parties still have to vote in favor of a reform.

An important goal of the reforms for the SPÖ and ÖVP at the start of these processes was to stop the rise of other political parties. If this was the main goal, the attempt seems to have failed. In recent years the FPÖ has risen, splintered, and follow-up parties now exist next to the FPÖ. The *Grünen* are also still around. As Fallend states: “After 2000, when the FPÖ entered the federal government in a coalition with the ÖVP, it was further weakened. Unpopular deci-

sions, which stood in striking contrast to its populist, anti-establishment past, led to electoral losses, so that at the moment (February 2009) the FPÖ only takes part in two of the five *Proporz* governments (Carinthia and Lower Austria) – and in the majority government in Vorarlberg.” (Fallend 2011: 182). At the same time, Table 5.2 shows that nationally the FPÖ can still count on quite some support. Citizens might also be becoming more erratic in their voting behavior, making elections more unpredictable as a whole.

There was wider support for the reform. In the case of directly elected mayors the *Gemeindebund* was in favor of the reform, which was an important ally in the reform process. Also, *Mehr Demokratie* was also lobbying in favor of the reform. The general public was in favor of the reform and *Kronenzeitung* supported and stimulated this with figures and articles. So there was some lobbying force in favor of the reforms. This might also explain why the reform, after implementation, did not lead to harsh debates afterwards. Even though municipalities sometimes got different mayors than they traditionally would have had and cohabitation occurred, the reforms did not lead to structural problems in Austrian municipal politics. The directly elected mayor was a supported reform. The consultative referendum has not been used at the national level, so it is not an important reform in this sense.

Some of the issues the reforms were meant to tackle have not been fixed. It seems that issues of disaffection are still about. However, the availability of direct democratic instruments does rule out debates on a possible democratic deficit (to a large extent) according to Pelinka and Rosenberger. When there is debate about a democratic deficit, normally people are talking about the European Union (Pelinka and Rosenberger 2007: 75). The consultative referendum has been used at the state level and quite frequently, in fact. Directly elected mayors at the local level have functioned properly in most instances, so in that sense the reform was a success.

Chapter 6

**How to understand democratic
reform in the Netherlands,
Germany, and Austria**

6.1 INTRODUCTION

In the previous chapters, different reform processes in the Netherlands (Chapter 3), Germany (Chapter 4), and Austria (Chapter 5) have been examined. These reform processes in the individual countries have subsequently been analyzed and compared. For both the introduction of directly elected mayors and of a referendum possibility questions were posed about the formal reform procedure, the actors involved in the reform process, and the situational circumstances of the reform process. After these questions were answered for the individual reform cases, the reform cases were compared per country to find out whether more structural characteristics for each country could have played a role.

In this Chapter, the level of comparison will allow a focus on more structural aspects, something that is illustrated by the shift in focus from the analysis of reform procedures to wider institutional structures in place in the different reform cases. Similarities and differences will be distinguished in a cross-case fashion. Based on this comparison, we can learn about reform processes more generally. What, for instance, increases or decreases chances of success? As an extension of this knowledge we can also learn more about the different countries and their reform capacity, the Netherlands in particular. This analysis connects different theories that were discussed in the first chapters of this study.

The structure of this Chapter is as follows. In section 6.2 the similarities and differences between the reform cases will be described and compared in order to answer the fifth research question: *What are the common elements of and the differences between the reform cases when the three countries are compared?* This comparison will reveal elements at a more structural level and could answer questions regarding necessary and sufficient causes to successfully reform democracy. Section 6.2 will start with a review of the first two chapters of this study in order to recall the case selection criteria, the relevance of the research, and the theoretical considerations. In section 6.3 these structural aspects will be linked to the analytical framework that was developed earlier on in the theoretical Chapter of this study. Finding an answer to the central question ***“How can we understand democratic (non-)reform – more specifically regarding the referendum and the elected mayor – in the Netherlands, Germany, and Austria?”*** will be the main topic of this section. To what extent do the different theories from Chapter 2 provide adequate answers to the central research question? Section 6.4 deals with the wider implications that follow from the cases researched in this study. To what extent, for instance, can we expand or alter these theories to make them more suitable for analyses of reform processes in the Netherlands and other countries?

6.2 SIMILARITIES AND DIFFERENCES BETWEEN THE REFORM CASES

In this section, the similarities and differences between the reform cases in the Netherlands, Germany, and Austria will be discussed. In the first Chapter, it was shown, that the position of the state in society has changed and that there has been a growing sense of unease in different democracies about the functioning of democracy (Norris 1999; Pharr and Putnam 2000; Putnam 2000; Scarrow 2001; Cain, Dalton et al. 2003; Scarrow 2003; Stoker 2006; Bekkers, Dijkstra et al. 2007; Hay 2007). It was shown that different democratic systems can be distinguished. Specific calls for reforms can usually be related to specific institutional arrangements in place (Lijphart 1999; Held 2006; Lijphart 2008; Vatter 2009; Hendriks 2010; 2011).

The starting point for this study is that these calls for democratic reform were also raised in the Netherlands. They have even led to formal reform procedures. Despite the fact that these formal reform procedures were initiated, the end result was often non-reform (Andeweg 1989; Andeweg and Thomassen 2011; 2011b). Two specific cases were identified that led to reform procedures that eventually did not result in the desired reform: the attempted introduction of directly elected mayors and the attempted introduction of a corrective legislative referendum at the national level.

These examples of reform can be contrasted with similar reforms in Germany and Austria, as these are both countries with consensus democracies and comparable state traditions (Lijphart 1999; Loughlin 2004; Held 2006; Lijphart 2008; Hendriks 2010; Loughlin and Hendriks 2011). In both Germany and Austria, the directly elected mayor was introduced in almost the entire country during the 1990s and steps were taken to introduce referendum possibilities where they did not exist already. In Germany, this meant introducing deciding referendums at the state level, as well as many possibilities for different types of referendums in municipalities. In Austria, where deciding referendums already existed at the national level, this meant introducing a consultative referendum at the national level. In contrast to the Dutch case, these reforms processes led to the implementation of reforms. This meant that some reform cases were relatively comparable to the Dutch case, which could be used to further the knowledge about these different reform cases, and specifically shed some light on the peculiarities of the Dutch reform cases.

In the second Chapter of this study, an analytical framework was developed, based on several theoretical debates that either dealt specifically with democratic reforms and democratic institutions or which could in another way contribute to the understanding of reform processes. With the help of these theoretical debates, a basic model was developed that could be used as an analytical framework for an analysis of reform processes. The model highlights three aspects of reform processes: The institutional structure in which the reform process takes place, the actors involved in the reform process and their attitudes, and the wider context in which the reform process took place. For the individual reform cases and the three countries, these aspects were considered by use of questions regarding the formal reform procedure, the

involvement of actors in the reform process, and the situational circumstances of the reform processes. These questions were answered for the different countries in the previous chapters. In this section, these different aspects of the reforms will be compared for all reform cases.

In the first Chapter and the different empirical chapters, the historical background against which the reforms took place was discussed. This historical background was theoretically seen as part of the wider reform context which was not case-specific. This context matters for country specific reform cases and to some extent for all cases alike, as this context also looks at trends that can be seen as wider trends in many democracies (Inglehart 1977; 1997; Norris 1999; Castells 2000; Pharr and Putnam 2000; Cain, Dalton et al. 2003; Stoker 2006; Hay 2007). Similarly, in section 6.3, where the understanding of the reform cases will be discussed more generally, the focus will be on the institutional structure in a broader sense than just the formal reform procedure focused on for the individual reform cases.

6.2.1 The formal reform procedures: Differences in difficulty of reform procedures

The leading question regarding the formal reform procedures in the different cases has been: *What formal procedure has to be followed in order to get the reform passed?* This question has been answered differently with regard to the different reform cases.

Comparing the different procedures, shows that the Dutch reform processes required the most voting rounds and generally had the most stringent voting rounds. Only looking at the number of votes required to amend the respective national and/or state Constitutions to introduce the possibility of direct mayoral elections and referendum (or make this introduction possible) we get the situation as depicted in Table 6.1. This table shows that the Dutch reform procedure required the most voting rounds to make direct mayoral elections and referendum possibilities constitutionally possible. In this Table specific legislation that usually follows the

	Elected Mayor		Referendum	
	<i>Number of voting rounds</i>	<i>Number of voting rounds with 2/3rd majority</i>	<i>Number of voting rounds</i>	<i>Number of voting rounds with 2/3rd majority</i>
Netherlands	4	2	4	2
Germany	1 or 2*	1	1 or 2	1
Austria	3 (or 4)†	2	2	1

Table 6.1 Number of votes needed in order to pass the constitutional amendment required for the introduction of the respective democratic reform[^]

* Only in Hessen and Bavaria, two voting rounds were required for a constitutional reform, due to the requirement of a referendum.

† The reform required action by the *Nationalrat* and the *Bundesrat* and one vote in the respective *Landtag* except for Carinthia and Tyrol, where the vote in the *Landtag* had to be retaken.

[^] The table only shows data from a single municipality perspective. In Germany and Austria, for instance, more voting rounds would be required to introduce the elected mayor at the local level in *all* the places where there are now direct elections.

respective constitutional amendments, is ignored, as is the fact that the introduction of referendums in Germany and direct mayoral elections in Germany and Austria required actions from a series of *Länder*; a similar reform in the Netherlands potentially requires only one voting by Parliament, as the Dutch legislature could decide to leave the decision up to provinces or municipalities. Rather than counting all the voting rounds in all the states to arrive at an introduction in all the states of the federation, the reforms in Germany and Austria were looked at from the perspective of the individual states.

When looked at in terms of composite veto players, the Dutch reform procedure is the most stringent, although the German and Austrian reforms potentially require more legislative action because of the presence of federal states (Tsebelis 2002). In other words, it could also be argued that the German and Austrian reform cases are more stringent because more legislative action is required (in terms of voting rounds) in order to introduce directly elected mayors in the entire country. However, the appraisal changes when the focus is on the number of votes needed in order to pass the reforms in a specific area, as is done in Table 6.1. It is not difficult to see that the Dutch reform procedure is the most difficult reform procedure in this latter instance. The Dutch constitutional amendment process requires two absolute majorities and two qualified majorities for both reform cases and, in both cases, the second qualified majority in the *Eerste Kamer* turned out to be too difficult to attain. This is a more complicated procedure than the reform procedures in Germany and Austria. Furthermore, although the introduction of direct mayoral elections in all German and Austrian states requires more voting rounds, the introduction of a reform in one federal state informally causes reform pressure in other states. This will be discussed in more detail below.

German Basic Law demands all *Länder* to have unicameral systems. In these State Parliaments, only one vote is required in order to change the state Constitution. Sometimes the vote required a qualified majority and sometimes a mandatory referendum after the vote in the State Parliament. In Germany, direct democratic instruments, such as the mandatory referendum, change the nature of the formal reform procedures. On the one hand, the mandatory referendums required to ratify constitutional amendments at the *Land* level constituted an extra veto player. On the other hand, there were different possibilities for initiatives (*Volksbegehren*, *Volksinitiative*) to place an item on the political agenda and could even lead to binding referendums in the end. The existence of these instruments can only be fully understood in relationship to the sum of opinions of citizens, which will be discussed in more detail in subsection 6.2.2. Public opinion as transferred into actual votes determines whether a referendum will turn out to be a veto player or not. Often, public opinion is known before-hand through opinion polls. This knowledge can be used to pressure parties that are unwilling to pass the proposed reforms. Opposition parties certainly used the different referendum possibilities in Germany in order to pressure government towards reform, but this will be discussed in the subsequent sections. What matters for the formal reform procedure in Germany, is that there

<i>Distinguishing features of the reform procedures</i>	
Elected Mayor	<ul style="list-style-type: none"> • More voting rounds required, especially in the Netherlands (see Table 6.1). • More difficult voting rounds required, especially in the Netherlands. • Decision-making at national level only in the Netherlands, at state level only in Germany. Mixed process in Austria. • Referendum possibilities were of influence in Germany but not in the Netherlands and Austria. • Final decision by directly elected bodies or by citizens in Germany and Austria, not in the Netherlands.
Referendum, same as elected mayor, but	<ul style="list-style-type: none"> • Decision-making at national level only in the Netherlands and Austria, at state level only in Germany. • Referendum possibilities not of influence in all three countries.

Table 6.2 Distinguishing features of the reform procedures that had to be followed in the Netherlands, Germany, and Austria for the introduction of direct mayoral elections and referendums

are possibilities for citizens or the opposition to take initiative and get involved in the formal procedure.

Austria did not have very rigid reform procedures. In the federal states, there were unicameral Parliaments and occasionally a referendum requirement (e.g. in the West-Austrian alpine states which are influenced by Swiss practices). However, because of the constitutional case that was filed against direct mayoral elections and the subsequent ruling of the Constitutional Court, other steps needed to be taken than anticipated when the first *Länder* started their reform processes. The Austrian federal Parliament became involved in the reform process and both Houses of Parliament had to vote on the constitutional amendment. The *Nationalrat* had to vote with a qualified majority, and the *Bundesrat*, as because it did not interfere with the powers of the states, could only send the proposal back to the *Nationalrat* to be reconsidered.

The differences between aspects of the formal reform procedures of the reform cases in the Netherlands, Germany, and Austria are summarized in Table 6.2. There are hardly any similarities between the researched reform cases. One is that multiple voting rounds were required in order to introduce the reforms discussed in this study in all instances. However, even here an exception has to be made for some specific German *Länder*, namely those without a required referendum. The same goes for qualified majorities, which were required in all reform procedures, except in some specific cases in the German *Länder*.⁴⁴ In this subsection it was shown, that the formal reform procedure was most difficult in the Netherlands for both the introduction of direct mayoral elections and the referendum possibility. More voting rounds and more stringent majorities were required in the formal procedure to make these democratic reforms even possible in the Netherlands. In Germany and Austria, the federal structures made (at least) partial introduction easier to accomplish. There were also possibilities for

44 Hessen requires a normal majority and a referendum, whilst the Constitutions of Bavaria and Baden-Württemberg can be changed without a vote of Parliament, solely on the base of referendums.

citizen involvement in Germany (*Volksbegehren*, *Volksinitiative*) which could change the nature of the reform procedure. Austria can be placed in between the Netherlands and Germany in terms of the rigidity of the formal reform procedure: Involvement of the national Parliament was required and Austria did not have the same possibilities for citizen involvement on the one hand. On the other hand the procedure was not as rigid as the Dutch procedure.

Knowledge of the difficulty of a specific reform process is not enough to understand why a reform was passed or not in the cases dealt with in this study. There are reasons why, despite easier or more difficult procedures, a reform was initiated in some instances but not in others. In order to answer the central question, it is necessary to understand why some reforms get more support than others. The formal procedure has an influence on the way citizens and politicians deal with reform proposals, but the formal procedure can only help or block a reform to some extent. Even the most rigid procedure cannot prevent reform in all circumstances. Therefore, the considerations of different political actors will be the subject of the next subsection.

6.2.2 *The actors in the reform processes*

As regards the political actors in the different processes, the central question was the following: *What actors are involved in the process, what seem to be the goals of these actors, and how do they try to achieve these goals?* This question has been answered by looking at different groups of actors that could be identified in the debates in Parliament, documents, and interviews. The most important actors in the reform processes that were identified in this fashion were political parties and their members. However, in some of these processes, individual (political) actors turned out to be of crucial importance – either as an enabling force, or as an obstructing force. Therefore, these individual actors were discussed separately. A third role was played by other actors, a broad category which included lobby groups, the media, and commissions. Finally, the role of the general public in the different reform cases was discussed, as public opinion occasionally had much influence on the way political parties made decisions. In this subsection, these four groups of actors will be discussed again, but now from a comparative perspective.

One group that has not received special attention is that of civil servants. In the first exploratory interview rounds in the Netherlands and Germany, it became clear that they were not as influential as is sometimes thought. At least not as influential as is argued by those that fear civil servants as an important unofficial state power or in theories that stress the importance of civil servants in the execution of policies (Bovens, 't Hart et al. 2007; Tops 2007; Lipsky 2010). In Austria, civil servants were not mentioned as playing a steering role in the reform process in the literature or in interviews, so no further attention was paid to this category in Austria either.

Several aspects seemed to have contributed to this non-steering role. Most importantly, it was indicated in the interviews with civil servants that were conducted, as well as in interviews with politicians, that civil servants had simply done their work as desired by their political superiors. Furthermore, in the parliamentary debates politicians were active that debated as if the proposed reforms did not require any specific knowledge. Unlike in some policy areas

where technocratic knowledge is required for a good understanding of an issue, politicians can quite easily debate democratic reforms – even though terms like ‘the referendum’ and ‘the directly elected mayor’ should not be used so generally as they are in these debates. A large variety of implementation-possibilities is connected to the general principle of the instrument (Koning 1995; Mueller 1996; Steur 2005). A final potential cause for the limited steering role of civil servants is that politicians seemed to want to keep matters in their own hands. Unlike some issues, these democratic reforms would fundamentally affect their party’s position as well as their own. Both of these matters of influence are incentives to keep a close eye on the policy preparation by civil servants.

Political parties

Political parties were the fundamental decision-makers in the different reform processes. The reforms in question all dealt with the relationship between the government and citizens as voters. In other words, the reforms have an effect on the role of political parties themselves. This makes the influence of specific interest groups smaller than if other groups of actors are involved and more technical knowledge is required. In all reform cases researched in this study, the actions of political parties were guided by three main questions: 1) what do we want?; 2) what do the people want? and; 3) what are the consequences of our actions?

As regards the first question, there are clear similarities between the countries. Political parties with similar ideological backgrounds tend to have similar positions on democratic reforms. This was especially the case in Germany and Austria. However, Germany and Austria’s federal structure sometimes leads to variations in the state-level positions of branches of the same national party. The general picture is that the green and the social-democratic or socialist parties (most importantly the labor parties, but also the more leftist parties) are more skeptical about direct mayoral elections and would instead prefer mayors elected by councils. However, the large socialist parties have voted in favor of the reforms in both Germany and Austria. By contrast, liberal parties and Christian-democratic parties are generally in favor of direct mayoral elections. The Dutch Christian-democratic CDA and liberal-conservative VVD parties voted in favor of the constitutional amendment aimed at the introduction of direct mayoral elections, but took a while to get there and for the most part seemed to support direct mayoral elections half-heartedly at best.⁴⁵ Why there are differences between the Christian-democratic positions on the researched democratic reforms in the Netherlands, Austria and Germany, and why the Dutch liberal VVD party has developed into a more conservative party on these issues than its German counterpart is not the topic of this study, but the differences did have an impact on the reform processes. Another important difference between the three countries is that, in the Netherlands, there was one political party (D66) that articulated the

45 As can be seen from the fact that nothing is actively being done at the moment by these parties in order to introduce these democratic reforms.

desire to reform democracy as one of their main electoral themes, whilst in Germany and Austria these demands came from lobby groups such as *Mehr Demokratie*. In interviews it has been put forward that democratic reforms are seen as a 'D66 toy', their 'crown jewels'. In this sense, it is reminiscent of Hirschman's notion of accepting a black sheep in order to be able to hold that there were different voices, but not having to act upon them (Hirschman 1970; Zimbaro 2008). Finally, more populist parties such as the FPÖ, the List Pim Fortuyn (LPF) and later the Dutch Freedom Party (PVV) often support democratic reform in the sense of more popular involvement as part of their electoral programs.

The positions on the referendum cases differ somewhat. Here, socialist as well as liberal parties were supportive of the proposed reforms in all three countries. This general tendency has not changed because the corrective referendum was stopped by a liberal-conservative senator in the Netherlands. The Dutch Christian-democrats were more skeptical of the corrective referendum than the liberal party at the time. Importantly, this Christian-democratic skepticism seemed less intense in Germany at the state level and in Austria at the national level. One reason could be that these countries already had experience with different types of referendums.

	Elected Mayor		Referendum	
	<i>Parties voting in favor of reform</i>	<i>Parties voting against reform</i>	<i>Parties voting in favor of reform</i>	<i>Parties voting against reform</i>
Netherlands	D66, VVD, CDA	PvdA, SP, GroenLinks	D66, VVD, PvdA, GroenLinks, SP	CDA, Wiegel (VVD), Batenburg, Small Christian parties
Germany	CDU, FDP, SPD	<i>Grünen</i>	All*	
Austria	ÖVP, SPÖ, FPÖ	<i>Grünen</i>	All*	

Table 6.3 Voting behavior in the decisive voting round for the required constitutional amendments†

*Bavaria as outlier.

†This is not to say that these parties were unanimously in favor of the reform, nor indefinitely (i.e. it did not become a fixed party position), but that the reforms were supported or not by these parties in the last (blocking or implementing) parliamentary voting round on the matter. In all cases this means that a constitutional amendment was to be followed by some normal legislation.

Assessing the consequences of the positions of citizens and the political parties, showed clear differences between the countries. In the Netherlands, politicians refer to the absence of elections in the period when the deciding voting round on the proposed reforms took place in the *Eerste Kamer*. Or, they explain that the reform was not exactly what they wanted it to be, for instance, because there would be differences between Dutch municipalities in terms of voting rights (some would allow direct mayoral elections whilst others would not). The weighing of the wishes of citizens in general, the wishes of the party members and the political leadership, and the political opportunities and costs of a decision to vote for or against the reform led to a decision against reform by a majority blocking minority on two

occasions in the Netherlands. In the case of the referendum, it was a personal decision by Hans Wiegel and Senator Batenburg to vote against the constitutional amendment. In the case of directly elected mayors, the PvdA voted against a constitutional amendment that they should theoretically have supported. The reasoning of the PvdA was that the effect of voting in favor of the deconstitutionalization-proposal would be a different end-result than the one they desired. Although PvdA party-leadership urged the Eerste Kamer faction to vote in favor of the reform, the Eerste Kamer faction followed the PvdA members who had voted in favor of council-elected mayors in a first ever party referendum on the matter. In both reform cases, the reforms would have meant less political influence for the parties in Parliament.

In Germany and Austria, differences between the federal states can be noted. Particularly in Germany, the SPD opposed the introduction of direct mayoral elections, without this translating into their actually voting against the reform proposals. In many instances, the SPD assessed the CDU reform plans to introduce direct mayoral elections were a move to win votes in upcoming elections with a proposal to implement a popular reform. Because the SPD interpreted the proposals in this way, they supported the CDU reform plans in the media and in the voting round when it took place. The SPD supported the reform half-heartedly in order to prevent electoral losses. If they managed to win enough seats in Parliament, they would attempt to pass a reform that was less influential or far-reaching in its design than might have been implemented if the CDU had anything to say on the matter. However, in most cases, the SPD openly supported the general reform idea.

In some states, the SPD was forced into action by opposition parties with a referendum threat. This is perhaps not as elegant as supporting a reform proposal because so many people want it, as was clear from opinion polls. In the end, however, the political parties supported the reforms because so many people did because they knew they would lose if it got to a referendum. The referendum threat was therefore an effective way to make a party opposing reform change its position. Leadership of political parties thought that a big difference between the party position and citizen preference would cost votes. In the case of referendums, the SPD was more supportive of reform, but the prime mover was Schleswig-Holstein. In Schleswig-Holstein the SPD deliberately worked towards a compromise that would be supported by the CDU. Political parties in Germany, more specifically the politicians voting on the reforms, figured that they would not really be harmed by a vote for a reform because the effects would be felt only at the local level.

In Austria, finally, the SPÖ and ÖVP were especially worried about the FPÖ, both in the different states that had already introduced direct mayoral elections and on a national level. An important goal for them was to stop the FPÖ from claiming they were being undemocratic. In some states, such as *Niederösterreich* (Lower Austria), the political parties still block the introduction of direct mayoral elections back. Apparently, there is no voting base present in Lower Austria to force political parties to introduce the reform. In all other states, the SPÖ and ÖVP supported the reform. In the case of the consultative referendum, the rise of the

<i>Specifics of the positions and behaviors of political parties</i>	
Elected Mayor	<ul style="list-style-type: none"> • In the Netherlands, one political party (D66) was explicitly and generally in favor of democratic reform. • Dutch liberal-conservatives and Christian-democrats generally took a more conservative position on the reform proposals than their German and Austrian counterparts. • Fear of losing seats to political competitors in Germany (CDU & SPD) and to rising populist parties in Austria (FPÖ); less so in the Netherlands. • In the Netherlands, it was feared that direct mayoral elections would benefit populism. This was less so in Germany and Austria. • In Germany and Austria federal states with a directly elected mayor served as a benchmark. • Political parties in Germany and Austria felt that they needed to respond to public opinion. This was considerably less so in the Netherlands. • Similar political parties had similar views on the reforms in Germany and Austria (for example the German SPD & Austrian SPÖ, and CDU & ÖVP); comparable Dutch parties did not hold similar views (for example, the PvdA as a party comparable to the SPD and SPÖ, and the CDA compared to CDU and ÖVP)
Referendum, same as elected mayor, but	<ul style="list-style-type: none"> • Fear of losing seats to the rising <i>Grünen</i> in Austria; less so in Germany, not at all in the Netherlands. • Fear of populism through referendums in the Netherlands; less so in Germany and Austria. • In Germany and already federal states with referendums that serve as a benchmark. • In Austria the introduced referendum possibility not as far-reaching as existing referendum possibilities. • Christian-democrats supported referendums in Germany and Austria; not so in the Netherlands.

Table 6.4 Specifics of the positions and behavior of political parties in the Netherlands, Germany, and Austria in the various reform cases.

Grünen influenced the SPÖ and ÖVP decision-making process. At the time, the SPÖ and the ÖVP were part of a 'grand coalition' that could enact constitutional changes without the other parties having any influence on the proposal. They supported the reform because it was a cheap solution: it did not cost them anything, as it created a democratic instrument which was less influential than the instruments that already existed. The reform could potentially stop the growth of the *Grünen*. If it did not, than it could at least potentially stop another fiasco such as Zwentendorf.

All in all, the reform processes in the countries were generally similar because political parties made political calculations in all cases. These calculations involved deciding what the political party wanted and determining the consequences of a course of action. However, the results of these considerations differed considerably as they were influenced by the formal procedure and the potential for citizens and opposition politicians to develop initiatives. The specifics of these deliberation processes are summarized in Table 6.4.

Individual actors

The Dutch reform cases stand because they featured persons that have stopped reforms from taking place, whilst some reforms in Germany and Austria were characterized by persons who developed into drivers of reform. In the case of the corrective referendum, Wiegel is of particular importance, because he voted against his party line on the matter. Batenburg also played an important role in that reform case because he changed his vote on the matter after the first reading. Batenburg was in a position to do so, as he was not bound by party politics at the time of the vote. The role of Van Thijn was often emphasized in the media with regard to the deconstitutionalization of the mayoral appointment, but this is less deserved. He was an influential person in the history of the reform process and it can be noted that he was the spokesperson of the faction that blocked the reform, but in the end the decision to block the deconstitutionalization was taken by the entire faction of the PvdA, not just by Van Thijn. The evening the deconstitutionalization was blocked, and thus (at least temporarily) direct mayoral elections, was named after Van Thijn in popular parlance because in a way it was also a fall from grace of a person supposedly in favor of democratic reform.

In the German and Austrian cases, different types of individual actors play an important part. Of the individual actors, the main outlier has been Uwe Barschel. His illegal actions as Prime Minister of Schleswig-Holstein (discussed in subsection 4.3.2) led to a crisis that influenced the introduction of referendums in Germany. The other individual actors that played an important role, however, were actors who either were political calculators themselves or caused others to start calculating politically. Walter Wallmann attempted to achieve a positive election result for the CDU in Hessen by introducing a referendum on direct mayoral elections more or less out of the blue. Heinz Fischer and Michael Graß suddenly proposed the *Volksbefragung* in Austria in an attempt to stop the growth of the *Grünen* and (to a lesser extent in the case of the *Volksbefragung*) the FPÖ. In general, Haider played an important role as a charismatic leader who caused the ÖVP and SPÖ to worry about their electoral positions.

It is not that the Netherlands were unmoved by populists (cf. the developments with Fortuyn and Wilders), but the openness of the political system has perhaps caused the political elite to get less nervous by demands for popular reforms. The electoral base for the 'reform party' D66 was never so large that considering democratic reforms became a real necessity for other major political parties in the Netherlands. Yes, electoral volatility has risen in recent years (as it has in most countries), but the country has not become ungovernable. Populist parties built around charismatic leaders have been absorbed into the system quite easily so far (Hendriks and Toonen 1998; Van Ostaaijen 2010).

There are no structural similarities and differences between the cases in terms of the roles of individuals. The individual actors who were important, however, were typical products of their countries or local political sphere. In the Dutch cases, influential politicians with a long track records were involved in blocking the reforms. They did this in the *Eerste Kamer*, which is composed of many experienced and esteemed politicians at the end of their political ca-

reers. At the same time, as we have seen in the reform cases in this study, the *Eerste Kamer* has considerable blocking powers. In Germany, direct mayoral elections got going because of one Prime Minister who used his powerful position to organize a referendum on a very popular measure. Referendums were introduced because of Barschel’s fraudulent acts in Schleswig-Holstein. In Austria, the fear for the growth of the FPÖ was initially closely connected to the popularity of Jörg Haider, and there were two Members of Parliament who took the initiative for the consultative referendum.

Other actors

The Netherlands can be contrasted with Germany and Austria in terms of the organizations that were involved in the reform processes. In Germany and Austria, the lobby-group *Mehr Demokratie* played a role in both reform trajectories. It supported the reforms and lobbied in various ways. There is no similar organization in the Netherlands. In interviews, several Dutch politicians stated something like ‘there were no lobby groups to promote the reform’. The role of reform of democracy lobby group is played by D66 in the Dutch cases.

Then there are organizations that are closely allied to the political process, such as the KGSt in Germany, the *Gemeindebund* in Austria, and the VNG (and its affiliate specialized organizations, such as the Dutch Association of Mayors) in the Netherlands. Again, the contrast between the Netherlands and the other cases is remarkable. The KGSt in Germany was in favor of direct mayoral elections on grounds of better government efficiency and effectiveness. In Austria, the representatives who had to vote on positions of the *Gemeindebund* were mainly mayors who were supportive of the reform. This was also the case because they were already semi-elected mayors. Both in Germany and in Austria citizens knew that normally the leader of the biggest local party would become mayor. It was already a local political function. By contrast, in the Netherlands there was still (formal) involvement by the national government. Mayors feared that they could no longer build a career as a mayor by promotion from a small municipality to a bigger one. The step was conceived to be larger from mayoral appointment to direct mayoral election than from indirect mayoral election to direct mayoral election. The smaller the change, the less resistance it creates and the easier it apparently is to implement the reform. This is in line with incrementalist theories of policy making (Lindblom 1959; Stone 2002).

	<i>Germany and Austria</i>	<i>The Netherlands</i>
<i>Elected Mayor</i>	<ul style="list-style-type: none">• <i>Mehr Demokratie</i> lobby group in Germany and Austria.• KGSt in Germany and <i>Gemeindebund</i> in Austria support reform.	<ul style="list-style-type: none">• D66 as reform of democracy ‘lobby group’ in the Netherlands.• VNG (and especially its affiliate organizations) in the Netherlands less supportive.
<i>Referendum</i>	<ul style="list-style-type: none">• <i>Mehr Demokratie</i> lobby group in Germany and Austria.	<ul style="list-style-type: none">• D66 as reform of democracy ‘lobby group’ in the Netherlands.

Table 6.5 Germany and Austria differ from the Netherlands with respect to support by organizations other than political parties

A specific part was played by different kinds of commissions. In Austria and Germany, (sub)commissions (*Verfassungsausschüsse*) were established within Parliaments to discuss the proposals and come to an agreement on the reform proposals. They operated behind closed doors without media attention and without exact minutes being taken. In the Netherlands there were also (permanent) (sub)commissions within Parliament but their role differed because of the more rigid reform procedure. As was indicated, the deals were made in coalition agreements. However, in later rounds, larger majorities were required, which could require votes of factions that did not have a say in those coalition agreements. State Commissions, therefore, played an important role, but their influence is highly dependent on their ability to reach unanimous agreement on an issue. In the case of the referendum, this happened with the Biesheuvel Commission. However, despite the unanimous advice of the Commission, the CDA and VVD continued their positions against the referendum. In the case of the directly elected mayor, there was no unanimity in the advice of different State Commissions. This left room for disagreement. It should be noted that party commissions also played a role in different reform processes, but that these commissions were perceived by respondents to work towards a desired result. In this respect, the vote amongst the PvdA members to establish a party position on the matter of directly elected mayors was exceptional.

General Public

The question of what the people wanted was dealt with in different ways by the political parties in the Netherlands, Germany, and Austria. In citizens' support for these democratic reforms, we have seen that figures supporting the reforms are of roughly the same size in the different countries. Large majorities supported the introduction of directly elected mayors or referendums in either opinion polls or referendums. On many occasions around 80% was in favor of these reforms (Hendriks, Van Ostaaijen et al. 2011). However, there were differences in the importance that parties attributed to these figures. In Austria, all parties valued these figures and viewed them as something worthy of a clear response. In Germany, this was less the case, but there were instruments to pressure the unwilling parties into responding adequately. In the Netherlands, parties seemed to care even less about these figures. This has to do with the salient nature of these reform issues. A proxy for the salience of these issues in the Netherlands, has been the presence of D66 in Parliament. In Germany and Austria, there was more insecurity amongst politicians about the potential effects of voting against the public opinion. There was a feeling that such majorities in opinion polls, on topics that were inconsequential for all those except the political elite itself, should not be ignored. Furthermore, the large parties feared that ignoring these calls would lead to splintered Parliament, a situation that had existed for a long time in the Netherlands anyway. Maybe this can even be partially contributed to ignoring such calls for reform as made by D66:

“Others have never really involved themselves with these topics. But if you’re smart, you would vote in favor of these reforms. The best way to knock out a competitor is by giving D66 what it wants” *D66 Respondent*.

There is a parallel between the Netherlands and Germany in the extent to which the PvdA and SPD refer to their internal party democracy. In the case of the PvdA, they felt that they had to make a decision which would either go against the wishes of the general public, or against the wishes of their party members. Because the party position on the directly elected mayor was based on the first internal party referendum on an issue, they voted in line with the wishes of the party members. The German SPD on the other hand, had just held an internal election on party leadership for the first time in its history, which led to more support for directly elected mayors. However, for both these parties, these first steps towards the development of internal party democracy were something that had to be taken into account. In that respect, there is little difference between the two big labor parties in these countries. However, they did differ in terms of the value that was placed on these preferences and so did the consequences of these preferences of party-members and of the general public.

	<i>Similarities</i>	<i>Differences</i>
<i>Elected Mayor</i>	<ul style="list-style-type: none">• In all three countries large majorities were in favor of direct mayoral elections	<ul style="list-style-type: none">• In the Netherlands and Austria no citizens initiatives or actual referendums were organized on the introduction of direct mayoral elections.
<i>Referendum</i>	<ul style="list-style-type: none">• In all three countries large majorities were in favor of referendum	<ul style="list-style-type: none">• In Germany and Austria similar instruments were already in place in federal states or at the national level.

Table 6.6 *Similarities and differences in the role of the general public*

6.2.3 *The wider context of the reform cases*

The question posed for all reforms in this instance was: *Against what historical background did the reform processes take shape and what case-specific situational circumstances seem to be of influence?* The wider context was interpreted as the historical background, on the one hand, and reform specific situational circumstances that had a direct influence on the way the reform process developed, on the other. The historical background was similar in all three countries in terms of increasing electoral volatility and in terms of citizens’ general value development in these countries (Inglehart 1997). There were also differences, such as the fact that the Dutch had ample experience with smaller political parties whereas German and Austrian politics had been dominated by fewer parties for a longer time. There are now changes towards more political parties in Parliaments in Germany and Austria. In Germany, other historical aspects were the separation of East and West Germany and the experiences during the Nazi-period

which made politicians sensitive to the fact that they needed to be responsive to society's needs and demands.

Situational circumstances such as political events had a distinguishing role in the different reform processes. Political events shaped the reforms in different ways. Some events were sudden shocks which demanded political action, other events were lingering reform pressures. The German reforms took place under the influence of three shock events and one lingering crisis. The three shocks were the Barschel Affair, the fall of the Berlin Wall with the subsequent reunification of Germany – resulting in the East German states adopting more direct democratic elements after the fall of the Wall –, and the result of the referendum in Hessen. For citizens, the Barschel Affair was an indicator of the effects of long lasting power and lack of transparency. The result of the referendum in Hessen showed that an overwhelming majority supported direct democratic reforms by actually voting for it. This referendum could be connected to a lingering crisis in the form of the lack of faith in politics as characterised by the word *Politikverdrossenheit*. These different crises were at once a stimulus to start a reform process and to keep this process going.

In Austria, political events affected the reforms in two ways. The first event helped propel the introduction of the *Volksbefragung*, the consultative referendum. This reform was caused by the result of the *Atomkraft* referendum, the result of which was shocking for Austrian politicians. The result of this referendum was binding and led to a hole in the Austrian budget. The referendum result made the Austrian government ask themselves how such a situation could be prevented in the future. Lingering pressure from the green movement meant that something had to be done. The introduction of directly elected mayors was a different type of crisis. The first state to introduce these elections, Carinthia, was the home base of Jörg Haider and at that point of the FPÖ. In order to deal with the rise of the FPÖ, measures had to be taken. This was also necessary in other states. The rise of the FPÖ was a more or less 'silent crisis', a challenge that needed to be dealt with. According to respondents, rejecting the reform at the national level was never a real option, because that would have caused even more electoral gain for the FPÖ and the *Grünen*.

In the Netherlands, there was no single political event that led to the two reform processes. The Dutch case was more similar to the Austrian case because it entailed something akin to a silent crisis. The Dutch turnout at the 1990 municipal elections dropped with more than 10% from 73.2% to 62.3% and in the following elections of 1994, barely recovered to 65.3%. The *Tweede Kamer* election turnouts were equally problematic: dropping from 85.8% in 1985 to 80.3% in 1989, and further down to 78.8% in 1994. The decreasing turnout led to a discussion in the Netherlands about the 'gap between citizens and the government' (*kloof tussen burger en bestuur*) and the need to deal with this gap in some way. One solution could be governmental reforms (Korsten 1997; Schouw, Tops et al. 1998). The two reforms researched in this study were initiated while the first Purple coalition was in charge. This coalition was the first coalition in it in many decades without the Christian-democrats. While the introduction of the corrective

referendum more or less ended in 1999, the process of introducing directly elected mayors was confronted with another electoral crisis. The populist Fortuyn party attained considerable electoral victories during the reform process, but this apparently did not have an impact on the reform process. Similarly, although there was no active reform process at that time, the referendum on the European Constitution in 2005 was seen as an argument against direct democracy rather than as an indication of a rift between citizens and their elected politicians which would require an intervention through democratic reform.

The figure introduced in Chapter 2 can be used to contrast the situation in Germany and Austria (reform) with the situation in the Netherlands (non-reform) to get Figure 6.1. This Figure takes some of the main elements from the reform cases in the three countries and summarizes them. The Netherlands is contrasted with Germany and Austria, which means that the bullet points are sometimes not as specific as the elements that were discussed in the previous chapters of this study. However, these bullet points paint a more general picture of the differences between the cases. For the specifics of a reform case, the previous chapters can be consulted. In the next subsection, these similarities and differences will be linked to the sensitizing framework developed in Chapter 2 in order to answer the main research question.

6.3 UNDERSTANDING DEMOCRATIC (NON-)REFORM IN THE NETHERLANDS, GERMANY, AND AUSTRIA

In section 6.2, several similarities and differences between the cases were discussed separately. In this section, the effects of these differences and similarities will be discussed and related to the literature on reform discussed in Chapter 2. In that Chapter, an analytical model was presented to be used in the comparison of the cases. This theoretical model and the theories that were used to develop it will help formulate an answer to the general research question of

	Similarities	Differences
<i>Elected Mayor</i>	<ul style="list-style-type: none">• General societal trends: <i>Parteienverdrossenheit</i>, lowering electoral turnout.• Growing electoral volatility and a societal wish for more direct involvement in government.• A longing for stronger political leadership.	<ul style="list-style-type: none">• Referendum result in Hessen was binding, whereas comparable figures in the Netherlands and Austria were ‘just’ opinion poll results.• Political fear for the rise of the Haider-led FPÖ in Austria.• In the Netherlands, reform was seen as a D66 pet subject.
<i>Referendum, same as elected mayor, but</i>	<ul style="list-style-type: none">• The desire to have an ‘escape option’ (an emergency brake or the possibility to ask for help from citizens).	<ul style="list-style-type: none">• Barschel affair needed to be dealt with in Schleswig-Holstein.• Political fear for the rise of the <i>Grünen</i> in Austria.

Table 6.7 Similarities and differences in the reform context in the countries distinguished according to reform cases.

this study: *How can we understand democratic (non-)reform – more specifically regarding the referendum and the elected mayor – in the Netherlands, Germany and Austria?*

6.3.1 The formal institutional structures: The influence of constitutional rigidity

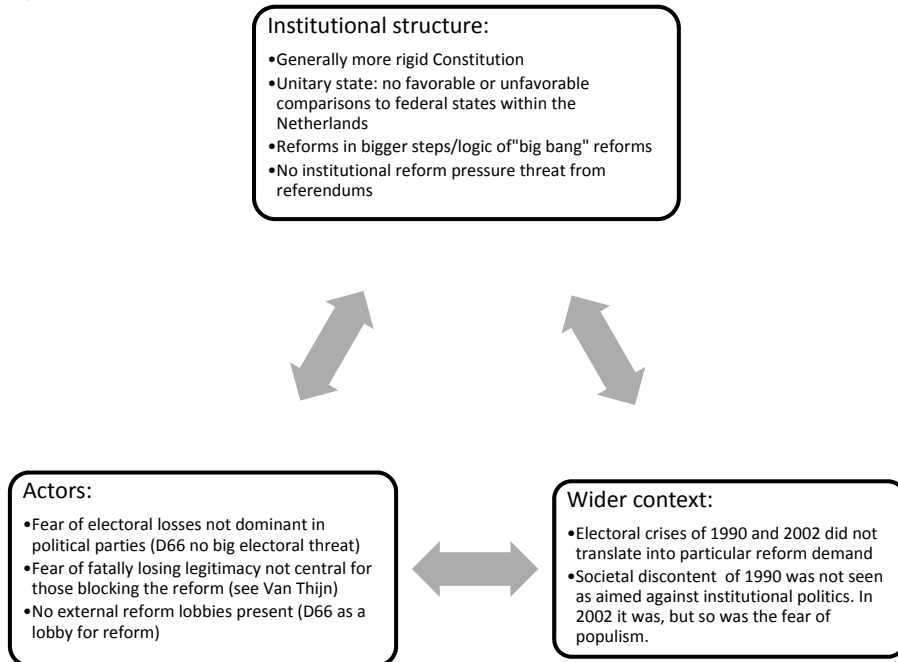
In this section, some general conclusions will be developed for the researched cases based on the comparison of the similarities and differences between the empirical cases and the theories discussed in Chapter 2. In Chapter 2, theories that discuss the formal institutional structures in place, the way these institutional structures are often nested institutions, and the problems this poses for those who want to reform institutional structures were treated (Kiser and Ostrom 1982; Olsen 2001; Tsebelis 2002; North 2002; Ostrom 2006; Scharpf 2006; 2008; Olsen 2009; Renwick 2010).

Many authors agree that the more veto players there are, the more difficult it becomes to pass a reform proposal (Kiser and Ostrom 1982; Tsebelis 2002; Ostrom 2006). A veto player, as explained in Chapter 2, is an institution that has the power to block a reform by voting against the proposal. A veto player can be a parliament or a president. For Tsebelis, introducing a referendum provision “is equivalent to the introduction of a new veto player, and the outcomes that prevail (whether the referendum is actually used or not) approximate better the preferences of the public” (Tsebelis 2002: 116). Tsebelis makes two claims here. The first is that the introduction of a referendum is equivalent to the introduction of a new veto player. Introducing a deciding referendum (because advisory referendums are not formal veto players, although they can be de facto veto players) means introducing a new player that can block a reform. The second claim is that the introduction of a referendum possibility will bring policy outcomes closer to those preferred by the general public. This means that the exact working of a referendum, whether as a veto player or not, will depend on the public opinion.

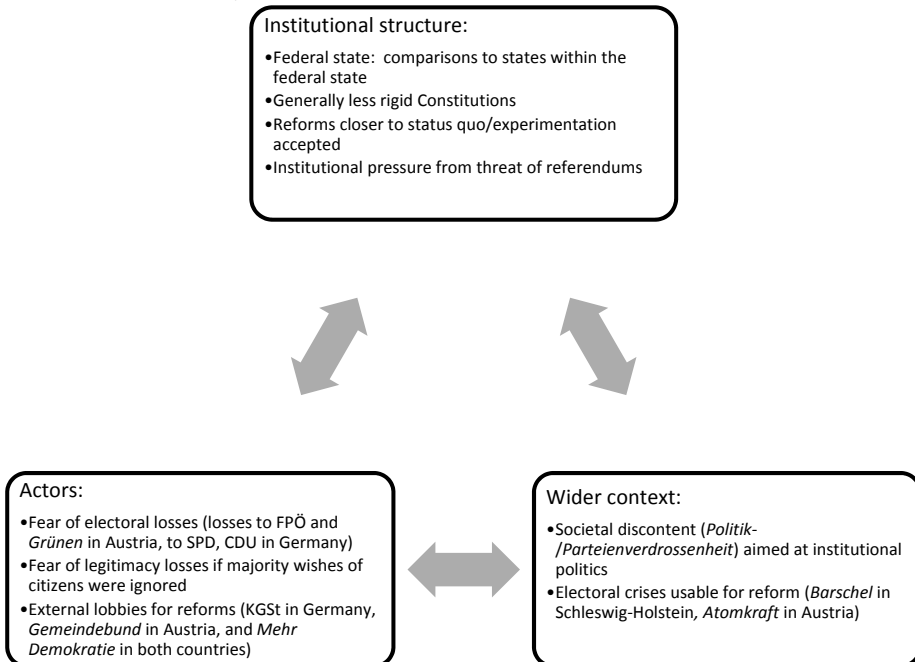
In the German direct mayoral election case and in the Austrian consultative referendum case, reform occurred partially because of referendums. In the German case, because the result of a mandatory referendum in Hessen supported reform. In the Austrian case, because the results of referendums led to the idea to create an ‘easier’ referendum possibility in order to prevent costly referendum results, such as the one not to turn on the Zwentendorf power plant. In the German cases, citizens and opposition parties could also organize initiatives which could eventually lead to deciding referendums. So, depending on the organization, the introduction of a referendum may not only lead to an additional veto player, but it may also generate a driver of reform processes.

The institutional structures in the different reform cases help us understand reform and non-reform in several ways. This has to do with the rigidity of the requirements for introducing the proposed democratic reform, on the one hand, and the possibilities of using democratic institutions to pressure politicians that are not inclined to reform, on the other. A distinction has to be made between the original reform, or the first mover, if the reform was the first in a series of federal states reforming, and the states that subsequently followed the first mover. This federal

Figure 6.1: Non-reform in the Netherlands



Versus reform in Germany, and Austria:



structure influences the considerations of political actors and is a necessary requirement for 'reform wave' type reforms. States follow one another in adopting a certain reform in such cases.

The fact that the referendum in Hessen had such an influence in the whole of Germany has to do with the way the institutional structure influences nested institutions in Germany. In Germany and Austria, the federal structures can make reform more difficult for reform, especially reforms at the federal level in Germany (Scharpf 1988; 2006). At the same time, apparently, the a referendum possibility in one state can also leverage reforms in another. In German states where opinion polls showed similar support for the introduction of directly elected mayors, the question 'why not here?' was easily posed after several states had introduced direct mayoral elections. In the Netherlands and Austria, attention was paid to the German reforms in the debates about the introduction of direct mayoral elections. In Austria, this had some influence, but the matter was easily dismissed in the Netherlands. The position of mayor was said to be different in Germany. The Dutch mayor was claimed to have a much more influential position, which compensated for the lack of citizen involvement, according to some of the opponents of the reform. The institutional structure matters in another way here, because the change from the existing to the new structure was seen as too big by some politicians who were skeptical about reform.

In terms of veto players with regard to both direct mayoral elections and a referendum possibility, the analysis of Tsebelis and others seem to hold. The Netherlands has the most veto players, Austria is in second, and Germany provides the easiest trajectory (because there was no involvement of the federal government required). In the Netherlands both reforms were indeed blocked, although an informal version of council-elected mayors is now in place. By contrast, in Austria there was a partial introduction of direct mayoral elections in a process that has not yet ended in direct mayoral elections in all *Länder* (and all municipalities). Debates about the reform still take place where direct elections have not been introduced so far. In Germany, there are referendums and direct mayoral elections in virtually all states (city states excluded, although city states have direct elections of executives at the neighborhood level). This makes it possible to formulate two conclusions for the cases researched in this study:

- a) The introduction of direct mayoral elections and the corrective referendum in the Netherlands was more difficult, due to the more rigid formal procedure in the Netherlands and absence of referendums within the system that could be used to pressure politicians towards a reform, such as in Germany and Austria.
- b) Germany and Austria showed that federal structures and referendum possibilities within these structures can help reforms get implemented; federal states tend to be comparable and arguments against reforming lose power after some states have introduced a specific reform.

One aspect of the formal institutional structure is the formal reform procedure and the possibilities for citizens to intervene through referendums. The reform that is proposed makes up

another aspect of the formal institutional structure, as a democratic reform will change it. As was shown in Chapter 2, democratic reforms are paradoxical when initiated by those in power, because it seems illogical to reform a system that brought you to power in the first place (Leyenaar and Hazan 2011). This will especially be a problem in rational-choice theories, unless the proposed reform theoretically increases the power of those proposing the reform, of course. Leyenaar and Hazan (2011) mention that a possible explanation could be the uncertainty that is related to reforming. When political parties are in power they generally have an interest in that structure because they will attune their organization to that structure. Changing the structure introduces an element of uncertainty which is generally perceived as unwanted.

In line with this claim, the proposed reform in the Netherlands was perceived to be a major change. The move from Crown-appointment to direct elections was seen as two steps away from the appointed mayor: The council-elected mayor could be seen as a reform compromise. Local citizens would have more influence if the mayor was council-elected, but only indirectly through elections for municipal councils. In Germany and Austria, the mayor was already elected by the council. Indeed, it was common for the leader of the biggest party (the one to receive most votes in all likelihood) to become the mayor of the municipality at hand. Part of the dissatisfaction with this system, came from the fact that this did not always happen. Sometimes, two political parties would agree to vote on a specific mayoral candidate, who was not always the leading candidate of the biggest party. From this perspective, the change towards the introduction of direct mayoral elections was a smaller change in Germany and Austria than the change was in the Netherlands. An important factor in Germany was that the federal states decided on the reform rather than municipal councils, because there were opposing voices in the municipalities that did not want a 'presidential' mayor (Holtkamp 2005: 19). This led to protests from the cities, but the consequence for the state-level parties of not proceeding with democratic reforms would be the loss of seats in the upcoming elections, so these parties voted in favor of reform. Compared to the German case, there was less fear of electoral repercussions in the Netherlands, although PvdA leader Wouter Bos did state that he had to be able to sell the party's vote to his electorate. Because no elections were planned close to the date of the *Eerste Kamer's* vote on deconstitutionalization in second reading, the vote against deconstitutionalization cannot beyond any doubt be connected to electoral losses in subsequent elections. As a reform away from the current system would mean a severe loss of influence for the political parties, the vote against deconstitutionalization was not all that surprising (Koole 2010).

Something similar happened with the introduction of referendums. In Germany, many states already had referendum possibilities. This not only led to pressure to reform, but showed that the reforms did not cause immense problems in comparable institutional settings too. In Austria, the referendum possibility in place was more far-reaching than the one to be introduced. Instead of the results being binding, like the arrangement already in place, the proposed referendum possibility allowed for non-binding referendums at the national level. Only in the Netherlands this meant that a new and potentially powerful institution would be introduced into the system.

In the Netherlands the effects of the introduction of direct mayoral elections, as well as of the corrective referendum, were more uncertain than in Germany and Austria. There was only some experience with mayoral referendums and (consultative) referendums at the local level. This leads to a third conclusion based on the formal institutional structure in place:

- c) A reform is less likely to take place if it is perceived to differ widely from the institutional structure in place, as there will be more uncertainty about its effects: Big bang reforms like the ones proposed in the Netherlands will be more difficult to bring about than gradual changes.

The previous three conclusions are not solely bound to the formal institutional structure. They need to be understood in connection to the political actors that operate within and deal with these institutional structures. The next subsection deals with the way political actors operated in the empirical cases.

6.3.2 Political actors in democratic reform processes: Popular support and political consequences

It has been demonstrated that there are similarities and differences between the reform cases in terms of the involvement of political actors. The first thing to be noted is that, although there was considerable popular support for the proposed reform in all cases, the reforms were not always accepted. This leads to the conclusion that:

- d) Popular support is helpful but not sufficient for democratic reform to be introduced: In all cases, the reforms were supported, but this did not lead to reform in all cases.

Popular support was not enough for reform to take place because of the possible way reform pressure could be communicated. In Germany, the institutional structure at the state level allowed for initiatives and referendums, so that popular pressure could be aimed beyond opinion polls into political action and political fact. In the Netherlands and Austria, these institutional possibilities were not present. Here, the issue of democratic reform essentially remained one political issue that politicians could focus on, amongst many other ones. When popular support cannot be articulated in any particular way (such as through a referendum, or a vote for a particular political party), political parties can afford to ignore this support. The recent attempt to reform the German Basic Law could count on public support too, but still failed to lead to desired reforms (Auel 2008; Scharpf 2008). In Austria, this changed when the first *Länder* introduced directly elected mayors. In these *Länder*, politicians knew electoral losses could follow if they did not support the reform, so they did take popular support into account. After these reforms had taken place and the Constitutional Court had ruled against the arrangement, the federal government did not want to move against the wishes of citizens and politicians in these *Länder*. As a result, they made direct mayoral elections constitutionally possible. Up until that point there had been many other issues on the political agenda in both the Netherlands and Austria that could be seen as (at least) equally important. Not to reform would very clearly show the vast differences between the desires of political parties and the general public.

In Germany and Austria, not only citizens but also lobby groups provided reform pressure, whereas, in the Netherlands, this role was played almost exclusively by D66. In the case of the elected mayor, municipal representatives in Germany and Austria argued in favor of the reform, whilst municipal representatives in the Netherlands were generally perceived to be against the reform. The fact that, in the Netherlands, there is a political party with a particular affinity for democratic reform seems to have hurt these reforms more than it helped them. Democratic reforms are seen as a 'D66 topic' instead of a topic of shared interest. Because D66 is seen as the voice of democratic reform, no effective lobby external to the political system has developed. Most importantly, other political parties in the Netherlands know that D66 will not gain a parliamentary majority any time soon, so they do not really have anything to fear from not responding to D66. In Germany and Austria, the groups that pushed the reform were big, established, political parties. Here, not going along with the reform poses a considerably greater risk for a party opposing the reform in electoral terms.

Another aspect related to popular support, the relationship between politicians and citizens, also played a part. Although it is difficult to value its influence in comparison with political calculations regarding electoral gain, it is clear that it has played a part in the reform cases. In Germany, so it seems, politicians feared the electorate more than politicians in the Netherlands did. In 2010, the German word of the year was *Wutbürger* ("angry citizens"), a word used to characterize citizens who were completely fed up with the political sphere and took to protesting. German politicians feel that their legitimacy is under attack if the course they set out is opposed by too large a majority of the people. They changed their policies accordingly. Austria resembles Germany more closely than the Netherlands with regard to the way politicians deal with public opinion. An indicator for the difference in interpretation of the general electoral changes since the 1980s is that, in the Netherlands, a *kloof tussen burger en bestuur* was perceived, whereas in Germany and Austria, people showed *Politikverdrossenheit*, and, more alarmingly for political parties, *Parteienverdrossenheit*. When the problem is defined as people being fed up with politics or political parties it is a different issue than the fact that there is a distance between citizens and the government administration. Although there will be some overlap between these concepts, citizens will more easily be part of the problem when the problem is a gap. It is seen as a problematic metaphor, because distance does not have to be the problem in Dutch politics (Schouw, Tops et al. 1998). When distance is seen as the problem, it is a problem that can also be solved with different (electoral) reforms than the ones discussed in this study (Hendriks 2010; 2011). In Dutch politics, it seemed that it was not strange to distrust citizens as regards these reforms: Representative democracy is there for a reason; citizens are more susceptible to the dangers of populism. This leads to a fifth conclusion:

- e) Dutch politicians interpreted representative democracy more radically than their German and Austrian counterparts: Dutch politicians felt free to disregard public opinion, Austrian and, especially, German politicians took public opinion more seriously.

The combined effect of the formal institutional structure and the different problem definition used in the Netherlands becomes especially clear in the case of the *Eerste Kamer*. In this House, generally more experienced politicians look at the quality of legislation, but have the freedom to take more aspects into account and freely do so. The combination of a career in politics and a generally unaffected attitude towards citizens' calls for change can lead to events such as the two rejections in the *Eerste Kamer*. It is important to consider the fact that Senators in the *Eerste Kamer* have no direct accountability towards the electorate. Members of the *Eerste Kamer* believe it to be a '*chambre de reflection*', a body that is vital for detached reflection on legislative proposals. In this sense, the Dutch *Eerste Kamer* can be characterized as the opposite of the German state legislatures encountered in this study. The German state legislatures feel that they have to listen to the people. The Austrian *Bundesrat* is a weaker House of Parliament than the *Eerste Kamer* and it also protects the interest of the *Länder*. In the Dutch *Eerste Kamer*, public opinion is of limited interest as regards democratic reforms. Chances are that there will be a democratic reform proposal in the future and that this proposal will just as easily be voted down due to the role of the *Eerste Kamer* and the interpretation Senators have of their legitimacy. Not that many Senators are needed to block a constitutional amendment, so relatively few Senators voting against a reform could block the reform.

All the reform cases provide examples of effective and ineffective leadership. For instance, much critique was formulated in interviews on the way Thom de Graaf negotiated regarding the topic of direct mayoral elections. If the introduction of direct mayoral elections is perceived as being the De Graaf's goal, his failure to realize this goal would be an example of failing leadership. But failing leadership in itself can also be a cause of reform, as was shown in the aftermath of the Barschel affair, which led to a commission on reform that was meant to create a reform package that both the SPD and the CDU could agree upon. There are two types of leadership that played an important role in the reform cases. On the one hand, there were examples of oppositional leadership that forced the ruling parties into reform (or blocked it, but this happened only in veto-player cases in the Netherlands). On the other hand, there were examples of consensus-building leadership. Most of the reforms were drafted behind the scenes. All the reforms in Austria, but also the German reforms, showed that parliamentary commissions were of vital importance. In terms of leadership, there is no example of a leader dominating an entire reform process. Instead, all cases were reform processes that lasted longer and showed different kinds of leadership. Therefore, we can conclude that:

- f) Leadership mattered in the reform cases, but there is not one winning leadership style that emerged from the reform cases discussed in this study.

6.3.3 The wider context of the reform processes: The influence of crises

Throughout this study, it has been shown that it is difficult to separate different aspects of reform processes from one another, even analytically. This has also been the case in this Chapter. Several aspects of the wider context in this study have already partially been dealt with in

the two subsections above. The general historical backgrounds show similarities in all three cases, but they are not the same. The articulation of the problem of political discontent in the Netherlands was different from the articulation in Germany and Austria (the *kloof* compared to *Verdrossenheit*), which may have changed politicians' political calculations. The history of political parties working together and competing for votes was also different in the three countries, although consensus-seeking is an important value in all three countries.

The remainder of this subsection focuses on the situational circumstances of the reform processes. In the second Chapter it was stated that Kriesi and Wisler (1999), in their discussion of the introduction of direct legislation in Switzerland and the United States, mention crisis as one of their main explanatory factors. Federalism and framing (which were dealt with more or less directly in the two subsections above) are also important according to Kriesi and Wisler. It has also been demonstrated that political events played an important role in both Germany and Austria in the development of the reform processes. In the German case, other authors have emphasized this as well (Haus 2005; Holtkamp 2005; 2007; Schmidt 2007). In the Austrian case, the role of crisis emerged from the interviews. In the Netherlands, pressure to reform grew because of the discourse on the *kloof tussen burger en bestuur* that developed after the 1990 elections, but this was not a single shocking political event that forced political parties to fundamentally consider specific reforms. The Dutch electoral earthquake of 2002 (see Figure 3.1) confronted Dutch politics with the rise of a type of populism comparable to that of the FPÖ in Austria, but it did not lead to calls for specific democratic reforms. Instead, the electoral result led to a focus on participation within representative structures.

In Germany and Austria, there were shocking political events which politicians felt needed a response. In Germany, the Barschel affair caused such an upheaval that reform had to follow in order to restore the legitimacy of the political system. The referendum in Hessen was a political event with a result that was so decisive that it could not be ignored by other federal states. The referendum result became a political fact other states had to take into account. Finally, the reunification and the orientation of the new federal states towards the south German model led to considerable pressure on the states that had not implemented reforms. In Carinthia, Austria, the SPÖ thought that Haider's FPÖ would become increasingly powerful, which led to a sense of crisis, that something needed to be done in order to stop the party's rise. In other states and at the federal level, similar considerations to those of the Carinthian SPÖ played a role. Similarly, the result of the Zwentendorf referendum and the subsequent rise of the *Grünen* led politicians in Austria to try and create a less powerful referendum possibility which could be used more easily and could hopefully stop the *Grünen* from winning more seats. Thus the two final conclusions can be formulated, one of which is connected to conclusion e) on the way politicians deal with public opinion:

- g) German and Austrian politicians more readily than Dutch politicians saw electoral shocks (referendum results, volatility) as events that required a serious response, such as a reform.

- h) Crises helped the reform processes move forward, although perhaps more so in Germany and Austria than in the Netherlands.

These developments can be interpreted as the punctuation of equilibriums through crisis (Baumgartner and Jones 1993). A political status quo of institutional structure functions as an equilibrium, and the political parties in power have no reason to change this institutional structure unless something forces them to do so. An electoral crisis changes the way political parties view the institutional structure and their position in relation to this structure and thus punctuates the established equilibrium.

The eight conclusions drawn from the cases are summarized in Box 6.1 below. In the next section some concluding remarks will be formulated.

BOX 6.1: GENERAL CONCLUSIONS BASED ON THE REFORM CASES: A SUMMARY

- a) The introduction of direct mayoral elections and the corrective referendum in the Netherlands was more difficult, due to the more rigid formal procedure in the Netherlands and absence of referendums within the system that could be used to pressure politicians towards a reform, such as in Germany and Austria.
- b) Germany and Austria showed that federal structures and referendum possibilities within these structures can help reforms get implemented; federal states tend to be comparable and arguments against reforming lose power after some states have introduced a specific reform.
- c) A reform is less likely to take place if it is perceived to differ widely from the institutional structure in place, as there will be more uncertainty about its effects: Big bang reforms like the ones proposed in the Netherlands will be more difficult to bring about than gradual changes.
- d) Popular support is helpful but not sufficient for democratic reform to be introduced: In all cases, the reforms were supported, but this did not lead to reform in all cases.
- e) Dutch politicians interpreted representative democracy more radically than their German and Austrian counterparts: Dutch politicians felt free to disregard public opinion, Austrian and, especially, German politicians took public opinion more seriously.
- f) Leadership mattered in the reform cases, but there is not one winning leadership style that emerged from the reform cases discussed in this study.
- g) German and Austrian politicians more readily than Dutch politicians saw electoral shocks (referendum results, volatility) as events that required a serious response, such as a reform.
- h) Crises helped the reform processes move forward, although perhaps more so in Germany and Austria than in the Netherlands.

6.4 CONCLUDING REMARKS

Democratic reform processes are complex processes which involve the opinions and actions of many different people. All these people have different goals and strive to attain these goals in different ways. Through the comparison of different cases in different countries, this study has sought to explain why democratic reform does or does not happen. Special attention was given to the Netherlands, as this was a country in which reform seemed particularly difficult to pass. In this Chapter, eight general conclusions were formulated based on the six reform cases that were researched. In this final section of Chapter 6, three hypotheses will be formulated relevant beyond the six cases in this study. These hypotheses are based on the reform cases researched and analyzed as well as the analytical framework presented in Chapter 2. The hypotheses look at the institutional structure of, the actors involved in, and the wider context of reform processes.

The first hypothesis is about the institutional structures in place. The first part of the hypothesis is not surprising as it is partially proven by other research that was discussed in Chapter 2, but in the second part several elements are added. On the basis of the research done in this study it has to be formulated as follows:

- 1) The more rigid the procedure, the less likely democratic reform is, unless citizens and opposition parties can push an issue onto the political agenda using initiatives and/or referendums and thus force opposing political forces into action.

The first hypothesis should be read in relation to authors who have written about veto players and authors that have stated that the Netherlands has seen no reform cases because the procedure for the reforms that were debated was simply more difficult than the procedures in other countries (Kiser and Ostrom 1982; Andeweg 1989; 1997; Tsebelis 2002; Ostrom 2006; Tsebelis 2008). It has already been documented that Tsebelis is unsure where to place referendums. They constitute veto players and they bring the desired outcome of a decision process closer to the wishes of the general public. The cases discussed in this study have shown that referendums or the threat of organizing a referendum can also be a driver of reform. This means that a referendum, depending on the type, can be a veto player in some situations, but can turn into the opposite of a veto player in other circumstances. This is an important nuance to Tsebelis' theory.

The second hypothesis looks at the political actors involved in these reform processes. A common factor between the researched reform cases was that, although other actors such as lobby groups and citizens did play a role, political parties dominated the reform processes. A difference between the Dutch, German, and Austrian reform cases was the way political parties dealt with public demands for political reforms. Behavior of political parties is commonly regarded as power-maximizing behavior, and the cases seem to support this viewpoint to some extent. From this perspective, democratic reform is illogical because it would reform a system that has functioned in such a way that it got the reformer political power in the first

place (Leyenaar and Hazan 2011). It is therefore noteworthy that none of the cases were dominated by power-maximizing considerations.

Ideological or other considerations, however, did play a role in the reform cases. D66 clearly thought that the proposed democratic reforms would improve the quality of democracy in the Netherlands. A majority of Dutch citizens supported the D66-backed reforms discussed in this study (Hendriks, Van Ostaaijen et al. 2011). D66 managed to get other parties to vote along with their desire to reform democracy because of the coalition agreement they had made. However, in both Dutch cases, the reform was blocked in the *Eerste Kamer*. This had to do with the democratic answerability of those who voted down the reforms. Wiegel (VVD) felt free to vote against the party line, Batenburg had no party line to adhere to. The PvdA in the *Eerste Kamer* felt bound more by the internal party vote than by party leadership's line and public opinion. The second hypothesis is based on politicians' interpretation of their answerability:

- 2) The more direct democratic answerability is, the more likely it is that politicians take public opinion into account.

Democratic answerability has to do with responsiveness of politicians to both citizens in general and to their political parties. It refers to both the fashion in which and to whom political actors feel they have to answer. First and foremost, answerability will have to do with the impact of a certain move on the political career of the individual voting politician and the impact of a vote on his political party. In the Dutch cases, the *Eerste Kamer* does not directly answer to voters. There are no elections for seats in the *Eerste Kamer*, so politicians in the *Eerste Kamer* look at their respective political parties first. A decision by the PvdA to vote along party lines and against public sentiments makes sense from this perspective. For the *Tweede Kamer* faction of the PvdA, this was different, because they would have to answer to citizens in popular elections and would have to woo undecided voters. Wiegel was at the end of his political career, so he did not need to worry about re-election for the *Eerste Kamer* and therefore did not follow the party line. In Germany and Austria, answerability was conceived in a different way. More politicians in these two countries were *verunsichert* ("insecure") and felt that they needed to follow public opinion more closely lest their party lose seats or the democratic system lose legitimacy. They felt that reforming was the right thing to do both because so many people wanted it, and because it would cost them electorally if they resisted.

The final hypothesis regards the wider context of the reform case. There are theories on crisis or some other shock that causes ingrained policies or political structures to change, although stability seems to be the logical option for those political parties in power (Baumgartner and Jones 1993; Kriesi and Wisler 1996; Leyenaar and Hazan 2011). The wider context only matters when political parties perceive it to be salient. In line with the two hypotheses formulated above, the third hypothesis reads:

- 3) In the case of consensus democracies, where multiple parties have to agree on a democratic reform, political parties need to have a tangible reason to reform, otherwise no agreement to change existing power structures will be made.

The third hypothesis follows Kriesi and Wisler's claim that crisis is a main cause for reform, but expands it. The hypothesis follows authors such as Leyenaar and Hazan, who state that it is not logical for political parties to change the system that brought them political power. However, sometimes a party specifically wants reform, such as D66 in the Netherlands. Parties in the Purple Cabinets had to go along with this democratic reform as a consequence of their coalition agreement. Otherwise, they would lose the support of D66 on other matters. In this sense, the hypothesis shows overlap with hypothesis 2, but there were also cases where this overlap was not present.

In the case of the Barschel affair and the referendum on the Zwentendorf power plant, there was no coalition agreement that led to reform. Instead, a tangible event caused some politicians to feel a need to respond through democratic reform. In the case of the Barschel affair, this resulted in a series of reforms including the referendum. In the case of Zwentendorf, with a costly project going to waste because of a binding referendum result, this was a situation that had to be prevented in the future. A consultative referendum was a logical solution to that problem. Thus, a tangible reason to reform can be a political crisis, but also a social construction like a coalition agreement.

It is quite possible that more support can be found for these hypotheses beyond the references and empirical findings already provided. However, this is beyond the scope of this study. In the next Chapter, the epilogue, a topic will be touched upon that also is beyond the scope of the main question of this research project, namely, the effects of the reforms. In the different subsections on the aftermath of each reform case, this topic has, however, been briefly dealt with, so, although it is not the central topic of this study, the statements in the epilogue do carry some weight.

Chapter 7

Epilogue: Do reforms matter?

7.1 INTRODUCTION

This Chapter should be seen as an “extra”, in addition to what is the focus of this study: The comparative analysis of democratic reform processes. The epilogue is a tentative exploration into the effects of the reform processes. In the previous chapters, the intricacies of six democratic reform processes have been discussed. We now have a better understanding of the reasons why reform turned out to be unfeasible in the Netherlands, whilst similar reforms were implemented in Germany and Austria. The guiding question has been, how to understand these different reform processes. In the previous Chapter, it was shown that the interplay between the institutional structures of these countries, political actors, and the wider context of the reform processes produced different results of the reform attempts. The three countries, although comparable in many ways, were shown to differ in various crucial aspects in these reform cases. In the reform processes, politicians seemed more affected by citizen’s demands in Germany and Austria than in the Netherlands. This response from politicians was connected to the formal institutional possibilities for citizens to make their views heard (through instruments such as referendums), as well as the different party systems and experiences in the three countries.

In the empirical chapters on the three countries, the reform aftermath has been discussed to some extent. In this epilogue, the results of the different reform attempts will be compared, and reflected on. The reform aftermath, as discussed in the empirical Chapters, primarily discussed the immediate effects of the reform cases. The immediate effects are investigated in subsection 7.2. In subsection 7.3 we will explore the wider implications of the differences in reform trajectories in these countries, with the help of data from the European Values Study.⁴⁶

7.2 IMMEDIATE EFFECTS OF THE (ATTEMPTED) REFORMS

The two Dutch non-reform cases led to two Cabinet crises. In the case of direct mayoral elections, Minister de Graaf resigned, but the coalition continued to govern. After only three days, a new coalition agreement was reached and the coalition continued without Thom de Graaf. In the case of the corrective referendum, the crisis was somewhat bigger because the entire

46 Of course, other data sets are available such as Eurobarometer, but these are not used in this epilogue (with one exception in the case of Figure 7.4). There are two reasons for this choice. On the one hand, European Value Studies offers several indicators that are better proxies for the effects of (non-)reforms than other data sets. On the other hand, other indicators which might be seen as more general proxies for the effects of (non-)reforms such as generalized trust in society are already discussed in many academic texts. There are no differences between the three countries that can be clearly attributed to democratic (non-)reform, so that these are worthwhile to deal with in this epilogue.

Cabinet resigned. However, even this crisis could be fixed. After several weeks the coalition continued to govern.

Other specific effects of the Dutch non-reforms are more difficult to assess. The current Dutch appointment of mayors comes close to the council-elected mayor, although it is not exactly the same. The position of the mayor has become more like the position of aldermen, which can be seen as a cause of a growing number of mayors resigning their position in recent years, under pressure from the municipal council (Korsten, Aardema et al. 2008; Korsten 2010). The fear of mayors losing power has not been experienced. Instead, mayors have received more and more powers, especially as regards municipal security (Korsten, Bijl et al. 2009; Korsten 2010). Some mayors are now questioning whether or not such powers need more direct legitimacy (Cachet, Karsten et al. 2009).

After the non-introduction of the corrective referendum, there has been some experience with 'advisory' referendums, such as the referendum on the Constitution of the European Union. This was officially an advisory referendum, as deciding referendums are not possible according to the Constitution, but political parties had announced that they would comply with the results of the referendum if a certain electoral turnout would be attained. The experience of this referendum was not evaluated positively by politicians. It was seen as a protest-vote against Cabinet and as a warning against further referendums in the future. On the local level, there has been much experience with different types of referendums, both positive experiences and negative experiences. Citizens have voted against government-proposed regulations such as the establishment of city-provinces, but referendums frequently provide positive results at the local level. All these experiences have not led to renewed activity to introduce the corrective referendum at the national level.

In the German and Austrian cases, immediate effects are more easily interpreted because the procedures have changed. There are tangible effects of the introduction of direct mayoral elections. It has been claimed in interviews for this study in both countries, that people are satisfied with the reform. The reform has, however, not provided local democracy with a permanent boost in voter turnout. The first mayoral election, after the introduction of the instrument, often leads to higher turnout than was normally the case for council elections in those municipalities. After this first election this figure drops to a lower level. The value of the introduction of direct mayoral elections in this sense, lies in the possibility of a meaningful electoral race between competitors taking place, not necessarily the actual race. When there is a real choice to be made, turnout will be higher. It plays a role that especially mayors in small municipalities tend to be re-elected several times.

Fears that surfaced in debates about the possible effects of direct mayoral elections, such as the fear for cohabitation, have been disproved. When cohabitation occurred, it has not led to ungovernable situations but instead to more consensus-oriented politics at the municipal level. This is not to say that there never are, or will be, problems with cohabitation, of course, but problematic cases are minority cases. The mayor does have a strong position, for instance,

in Germany: “[He] holds the chair of the local council and is head of the administration. His position is rather strong, not unlike the head of a presidential government, but with the power to control the agenda of the local ‘parliament’, the council. Reforms of the local administration following the concept of New Public Management reinforced the position of the mayor as against the council, although not all reform concepts have been implemented” (Benz and Zimmer 2011: 161). However, direct mayoral elections did not lead to the *Ortskaisertüme* that were feared by those opposing the reform, either. If the introduction of direct mayoral elections has not brought the problems that were feared, politicians can at least note that they accommodated the public opinion with these reforms.

The picture is mixed as regards the introduction of different types of referenda in Germany and Austria. In Germany, “[e]lements of direct democracy [...] play an increasing role in the *Länder* and at the local level. [...] The combination of different patterns of democracy implies tensions but also versatility. This is particularly true for politics below the *Länder* level. Although the German Constitution remains static, democracy has changed during the history of the federal republic” (Benz and Zimmer 2011: 151). Direct democracy at the state level is less influential than at the local level (Benz and Zimmer 2011: 158). At the local level, it took some time to take root, but a clear trend towards increasing usage of instruments of direct democracy can be seen. This usage is influenced, to a large extent, by the relative difficulty of organizing a referendum: The easier it is, the more use will be made of the instrument.

In Austria, the consultative referendum that was researched in this study has not been used. In this sense, it did not have immediate effects. At the local level, the consultative referendum has been used quite often. In general, it is noted by scholars on Austrian politics, Austria does not have a culture in which direct democracy plays an important role. Germany and Austria now both have various referendum possibilities, but in terms of use neighboring Switzerland clearly stands out. With regard to the referendum Germany and Austria lag Switzerland “at a respectable distance, with Austria coming clearly last in terms of actual use.” (Hendriks, Loughlin et al. 2011: 735).

Benz and Zimmer state for Germany that, regardless of the question of success or failure: “voter democracy has an indirect impact on local democracy. It drives local elites to negotiate an agreement among all the relevant groups in their community. Thus, much like in Switzerland [...] it reinforces patterns of consensus democracy” (Benz and Zimmer 2011: 164). This holds for the Austrian case as well.

A final remark about immediate influences of the reform cases regards the effects of the reforms in Austria on the rise of the FPÖ and the *Grünen*. Politicians from the SPÖ and ÖVP seemed to believe, and indicated that this was the case in interviews, that not going along with the FPÖ’s reform demands could electorally cost them. Whether or not the reforms have had such effects is hard to say. Such effects would sooner belong in the category of wider reform effects. There are numerous factors that can intervene with decisions to vote for or against a party beyond a specific reform in a specific instance. This is reflected by data from

the *Politbarometer* in Germany. The *Politbarometer* presents data collected around elections at the *Länder* level. An issue such as *Politikverdrossenheit* (which is the best indicator for the desire for political reform in the *Politbarometer*) is generally indicated by around 1 or 2 percent of the voters to be their top issue for the upcoming elections. At the time of the reform, though, democratic reform was seen as an important issue by Austrian politicians. The *Politbarometer* data have been gathered more recently, so although they do not seem very important now, democratic reform could have been a more important issue in specific Austrian elections at the time. If this was the case, however, it has not stopped the FPÖ and *Grünen* from continuing to grow (see Table 5.1). The only real instance of electoral loss for the FPÖ happened around disputes about the leadership of Jörg Haider and the establishment of the BZÖ as an FPÖ split-off. However, after some turbulent years, the FPÖ seems to be growing again under the leadership of Heinz-Christian Strache.

7.3 WIDER EFFECTS OF THE (ATTEMPTED) REFORMS

To claim wider societal effects from the attempted reform cases is more difficult. Some influence of a reform might be made plausible, but to attribute effects of an attempted reform with scientific certainty requires a study in itself. Still, some claims on wider societal effects might be reasonably argued for. For instance, Elchardus and Smits note, that those institutions that are not actively involved in daily politics, those institutions that have an independent position of some hierarchical nature, are the institutions that can claim high trust figures, whilst those actively involved in politics cannot (Elchardus and Smits 2002: 41). If it is true that institutions that are not involved in daily politics can count on more trust, the relatively detached, unelected Dutch mayors should be able to count on a certain trust bonus. At the same time, some mayors note that their position is becoming increasingly political, it involves more attributed powers than a while ago, which might negatively influence trust in mayors (Cachet, Karsten et al. 2009).

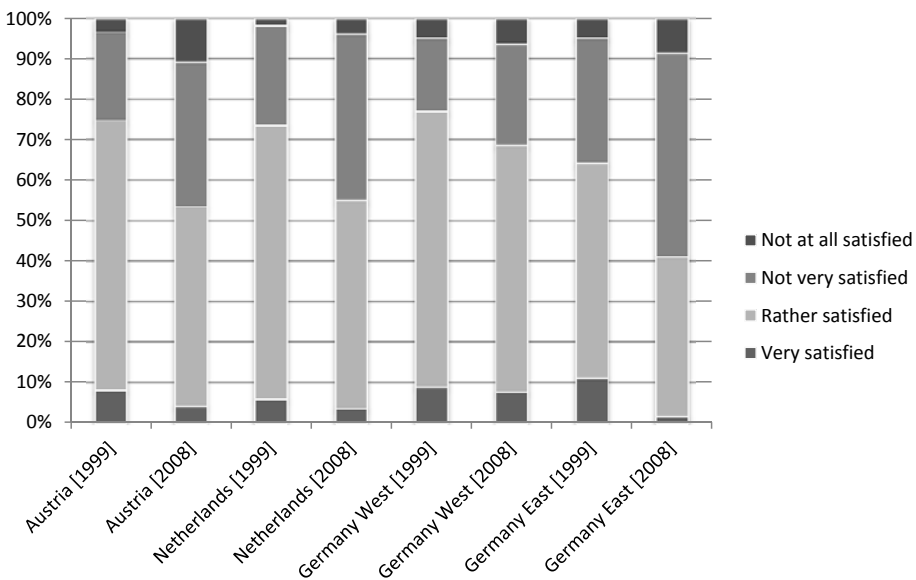
Elchardus and Smits note, that the development of mass media and especially the development of commercial television, has led to a decline in trust (Elchardus and Smits 2002: 68). There are differences here: Those who read more elitist newspapers, for instance, are less inclined to lose trust. The media not only have a general influence on the trust of people in politics, but at the same time have an influence on the development of specific political proposals. If popular media are critical or supportive of reform politicians will have to deal effectively with this media coverage to prevent political damage to their position.

It has been shown that the results of the reform processes between the countries differ. In the European Value Studies database there is a question regarding the satisfaction with the

way democracy is developing (see Figure 7.1).⁴⁷ The question has only been posed twice so far, and many more issues than the referendum and direct mayoral elections will be taken into account by citizens, but it is likely that such issues will play a role in the way citizens assess the *development* of democracy. In contrast, the Eurobarometer asks a more general question about overall satisfaction with the way democracy works.

Figure 7.1 clearly shows that in all countries the evaluations of the development of democracy has become less positive in 2008 compared to 1999. Overall, more people are positive than negative in their judgment, with the notable exception of former East Germany in 2008, where more people were dissatisfied than satisfied. The Netherlands and Austria showed comparable levels of satisfaction and former West Germany showed slightly more positive figures. The Netherlands and Austria did show a larger drop in satisfaction with the way democracy developed than West Germany.

Figure 7.1 Satisfaction with the way democracy develops



Source: EVS 1981-2008 Longitudinal Data File

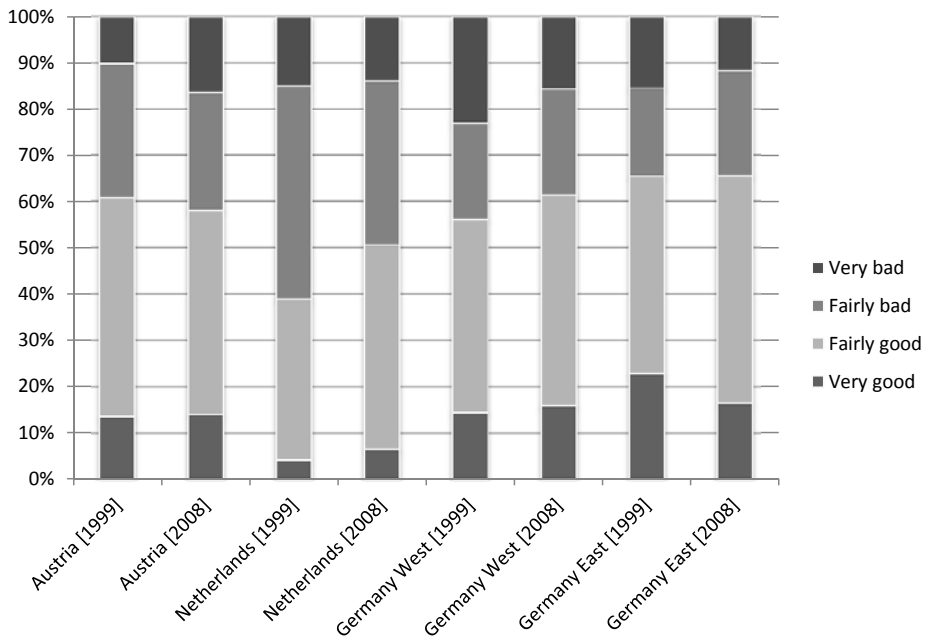
Question posed: On the whole are you very satisfied, rather satisfied, not very satisfied or not at all satisfied with the way democracy is developing in our country?

47 The EVS data distinguish East Germany from West Germany because when the Survey started these two countries still existed. There are still notable (statistical) differences between the countries, as will be clear from the figures in this chapter, but the differences are becoming smaller.

Perhaps there was some wider trend of diminishing satisfaction with the way democracy developed in these three countries. In the case of East Germany, it is likely that this had to do with unmet expectations. The reason why West Germany was performing relatively well on this item does not become clear from the Figure. It can neither be proved nor disproved that it had to do with the substantive reforms during the 1990s. Both Austria and the Netherlands registered a similar drop in satisfaction, while Austria had implemented such democratic reforms as direct mayoral elections. This does not seem to help build a case for a positive effect of reforms on satisfaction figures. However, considering the West German data and the (more) substantive reforms that took place there, it cannot be dismissed that there might have been some influence of the reforms on the satisfaction figures throughout the years.

In the same period, EVS also asked about the willingness of citizens to defer decision-making to experts instead of government (Figure 7.2). This question was posed in a series of questions which also involved democracy and dictatorship. The question should be read as asking if citizens prefer technocrats rather than government making the decisions. The Netherlands stands out because the respondents of the survey seemed to have more faith in government. Fewer respondents in the Netherlands see expert decision-makers as a desirable option than

Figure 7.2: Political system: Having experts make decisions



Source: EVS 1981-2008 Longitudinal Data File

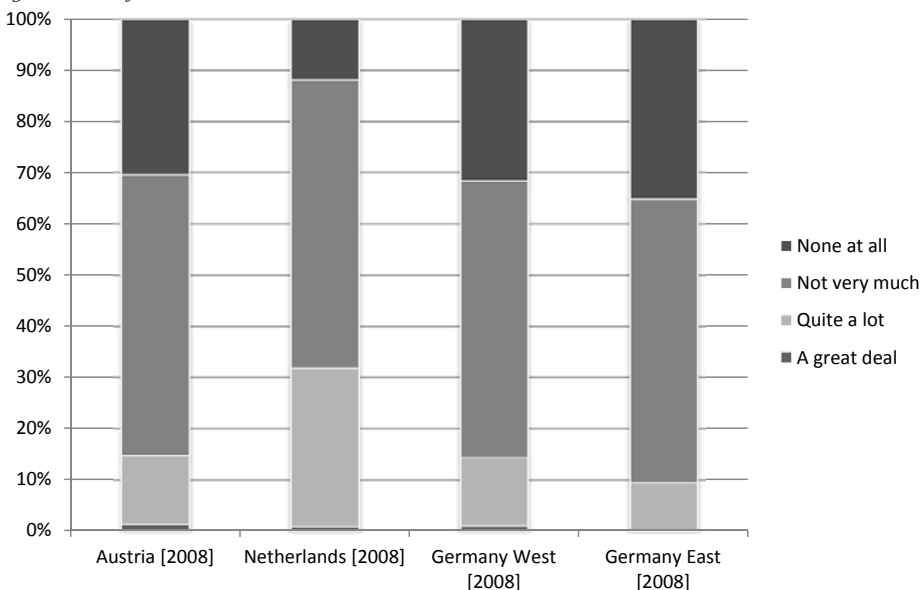
Question posed: I'm going to describe various types of political systems and ask what you think about each as a way of governing this country. For each one, would you say it is a very good, fairly good, fairly bad or very bad way of governing this country? Having experts, not government, make decisions according to what they think is best for the country.

in Germany and Austria. There was an increase of more than 10% in favor of expert decision-making in the period between 1999 and 2008 in the Netherlands though, which coincides with the period in which there was a series of unstable Cabinets in the Netherlands.

Dutch appointed mayors are both technocrats of a sort and part of government. They are not involved in political struggles, and are supposed to stand above daily politics, but have become more politicized in recent years. In this sense, the political turmoil of the consecutive Balkenende Cabinets might have strengthened the demand for expert leadership. It has to be noted, however, that the demand for the introduction of direct mayoral elections has not diminished (Hendriks, Van Ostaaijen et al. 2011).

The Figure on the willingness of citizens to defer to experts seems to be supported by the confidence of citizens in political parties (Figure 7.3). The question was posed for the first time in the EVS in 2008 and it clearly showed that citizens were not very positive about political parties in general. However, this overall negative opinion was less severe in the Netherlands. In the Netherlands, there was a group almost twice as large as in Germany and Austria that stated to have quite a lot of confidence in political parties. In Germany and Austria, *Parteienverdrossenheit* was a cause for concern when the reform processes took place. It is not clear to what extent the implemented reforms took pressure to deal with *Parteienverdrossenheit* away from political parties in Germany and Austria, as the EVS only provides 2008 data. It does become

Figure 7.3: Confidence: The Political Parties



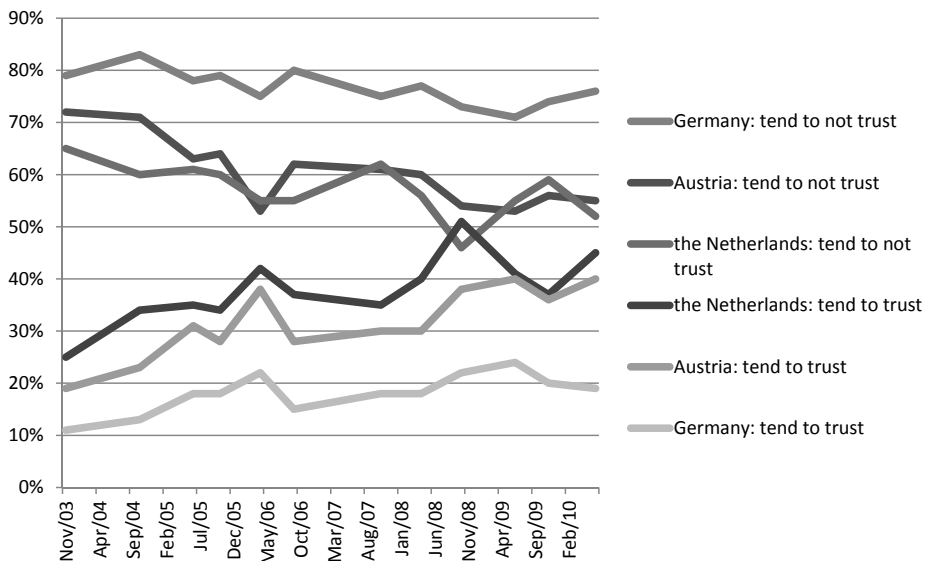
Source: EVS 1981-2008 Longitudinal Data File

Question posed: Please look at this card and tell me, for each item listed, how much confidence you have in them, is it a great deal, quite a lot, not very much or none at all? Political parties.

clear from Figure 7.3, that the shift in power away from political parties towards citizens through the introduction of more elements of person-oriented pendulum democracy and referendums did not lead to more confidence in political parties than in the Netherlands, where the issue of *Parteienverdrossenheit* was never as pronounced as in Germany and Austria. Perhaps this has to do with the labeling of the problem. The problem in the Netherlands was seen as too great a gap (the *kloof*) between politicians and citizens, whilst Germans and Austrians were fed up with political parties in general if we accept the label of *Parteienverdrossenheit*.

Eurobarometer can serve as a counterpart to the EVS data in this instance. Eurobarometer provides longitudinal data on whether citizens tend to trust or tend not to trust political parties. For instance, the 2008 spring tranche of Eurobarometer finds results similar to the ones presented in Figure 7.3. In the spring of 2008 Eurobarometer notes that in Austria 30% of those questioned tend to trust political parties, and 60% tend not to trust political parties; in the Netherlands, 40% tend to trust political parties, and 56% tend not to trust political parties; in East Germany 11% tend to trust political parties, and 83% tend not to trust political parties; finally the West German figures are slightly better than the East German ones, as 19% tend to trust political parties, and 75% tend not to trust political parties. A longitudinal figure, built with the EUROPA website for Public Opinion Analysis, is presented in Figure 7.4. In it we see that there is a trend towards more trust in all three countries, but with noteworthy

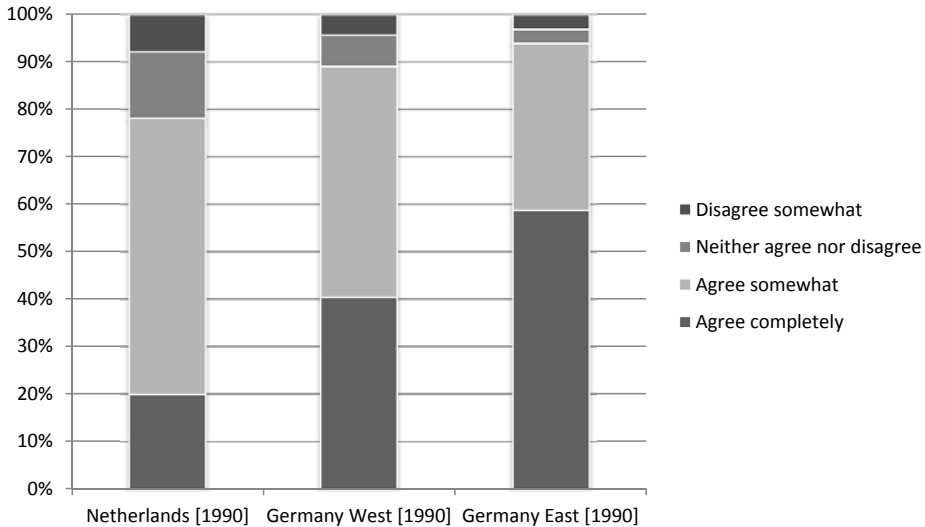
Figure 7.4: Trust in Political Parties Development from 2003 to 2010



Source: EUROPA Public Opinion Research – Eurobarometer Interactive Search System.

Question posed: I would like to ask you a question about how much trust you have in certain institutions. For each of the following institutions, please tell me if you tend to trust it or tend not to trust it? Political Parties.

Figure 7.5: Our government should be made much more open to the public



Source: EVS 1981-2008 Longitudinal Data File

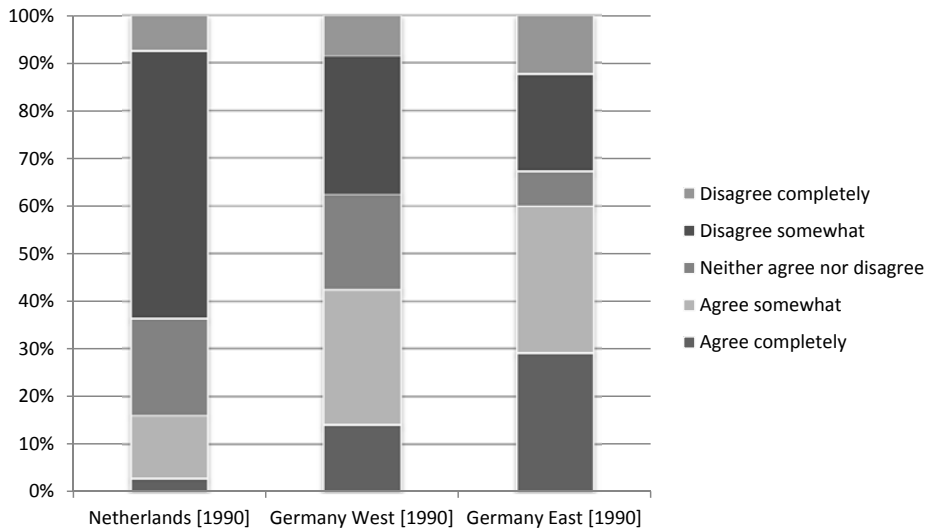
Question posed: I am going to read out some statements about the government and the economy. For each one, could you tell me how much you agree or disagree? Please use the responses on this card. Our government should be made much more open to the public.

differences between the countries. The Dutch have more faith in their political parties than Austrians and, especially, Germans in their political parties. Unfortunately, the longitudinal data was only available from 2003 onward. Developing a figure running back to the start of the reform procedures, at the end of the 1980s, was not possible. Generally though, despite the willingness to implement democratic reforms when public opinion demands it, German and Austrian citizens trust their political parties less than their imperious Dutch counterparts.

We have to realize that EVS data provide some information, but no definite answers to the effects of the reform processes. Two figures are worth sharing nonetheless, as they are especially pertinent to the issue of democratic reform. These figures are both from 1990, on questions that were asked only once in an EVS round, and show the Netherlands, West Germany and East Germany.

The first histogram (Figure 7.5) shows the wish of the people for more openness of government to the public. It is not clear whether the question in the EVS refers to transparency or openness to influences from citizens. Both answers are possible, when someone is asked to respond to the statement 'government should be made much more open to the public'. Both transparency and openness are affected by the introduction of direct mayoral elections and referendums. In the Austrian case of the introduction of direct mayoral elections, one of the drivers of the reform was dissatisfaction with deals between political parties on who would become the mayor of a municipality. Referendums and direct elections can give citizens a

Figure 7.6. Political reform is moving too rapidly



Source: EVS 1981-2008 Longitudinal Data File

Question posed: I am going to read out some statements about the government and the economy. For each one, could you tell me how much you agree or disagree? Please use the responses on this card. Political reform in this country is moving too rapidly.

vote where an issue was previously affected only by citizens. The result of the East German respondent is not surprising considering the year in which the question was posed. East Germans wanted more openness. Interestingly though, West Germans and Dutch respondents also wanted more openness, but less markedly so.

The second histogram (Figure 7.6) makes this specific comparison of the Netherlands and Germany even more interesting. Figure 7.6 shows the response to the question of the speed of reform. As we know, East Germany and West Germany were facing reunification and there were also supporters of the old regime in East Germany. In this light, it is not surprising that there were quite some people in East Germany who thought that reform was going fast. The Dutch were not faced with similarly turbulent political reforms, but relatively stable politics at the time. More than 50% of the Dutch felt that reform was not going too rapidly, which suggests the contrary: Reform might have been going too slowly. Although the Dutch do not seem overly critical of their political parties, change is welcome, according to the figures presented in this subsection. The demand for reform has already been mentioned in Chapter 1 of this study, and it is corroborated by the statistics (Hendriks, Van Ostaaijen et al. 2011).

In the next subsection the immediate and wider developments will be used to make some concluding remarks on the question of whether or not these reform processes matter.

7.4 CONCLUDING REMARKS

The discussion in the epilogue regarded the question to what extent the democratic reforms dealt with in this study matter. In this epilogue, a tentative and provisional answer is provided. In all reform cases, cases of reform as well as cases of non-reform, there are immediate effects but it is difficult to say something about the wider societal effects. Fears that were put forward by parties opposing the introduction of direct mayoral elections in Germany and Austria, amongst other things fears of cohabitation, were certainly proven wrong (Kuhlmann 2009). Cohabitation proved to be no insurmountable problem to local democracies. Those who argued that reform would be very good for citizen participation were proven wrong too. If electoral turnout is used as a prime indicator for participation: General turnout did not increase dramatically. Of course, there are other indicators which might show otherwise. The first direct mayoral elections yielded higher turnouts than were normal, when elections for municipal councils took place. After that first election round, turnout only becomes higher for elections where the result is of great importance in some sense.⁴⁸ It could be tentatively concluded, that there is a similar situation in the Netherlands, be it in relation to different elections, as the participation of the PVV correlated with higher electoral turnout. Perhaps this was also the case because the participation of the PVV provided supporters and opponents of the PVV with a clear motive to vote. A new sound that people like or thoroughly dislike can draw people to the ballot.

The Dutch did not get direct mayoral elections. Fears of diminishing individual competences for mayors were mentioned as a reason to vote against the reform in parliamentary debates. These individual competences were not diminished, instead, some mayors are now worried about their power gains in relation to the fact that they have no legitimacy from direct elections. It is difficult to say with any certainty whether or not the PvdA has been punished electorally for blocking the introduction of direct mayoral elections. Electoral volatility is very high in the Netherlands, and the PvdA has not performed well in recent elections and opinion polls. This cannot be attributed mainly to the introduction process of direct mayoral elections, because many factors will have contributed to this electoral decline. However, at the time, the PvdA received criticism in the media (especially from D66 politicians) because of its conservative vote, so it is not unthinkable that it had some (marginal) influence in the following election result. For some, the image of Van Thijn has been damaged. He was seen as a true reformer before he and his fellow Senators blocked deconstitutionalization and thus the introduction of direct mayoral elections any time soon.

In the case of the different referendums that were researched in this study, there are divergent results. In Austria, the consultative referendum has not been used at the national level,

48 For an example from the UK see: Curtice, J., B. Seyd and K. Thomson (2008). "Do Mayoral Elections Work? Evidence from London." *Political Studies* 56(3): 653-678.

but usage of the consultative referendum at the subnational level has increased in recent years. In Germany something similar has happened. First, the new referendum options were not really used, but usage has slowly been increasing. This has to do with the relative ease with which citizens can organize a referendum, on the one hand, and with the presence of a referendum culture, on the other. The easier it is to organize a referendum, the more inclined citizens are to actually organize a referendum. In Germany, this makes some South German *Länder* that already had referendum provisions relative laggards nowadays. The arrangements that were introduced later in other *Länder*, were less demanding on citizens and subsequently used more frequently than those in the South German *Länder* (Kost and Wehling 2010).

The ease of organization matters, but so does a culture of referendum usage. This is in line with theories of historical institutionalism that were discussed in Chapter 2. Germany and Austria are both countries that historically do not have much experience with referendum usage. Their referendum culture can be contrasted with the Swiss referendum culture. In Switzerland, referendums have been used for many years; most citizens find it only normal that referendums are organized on a regular basis. In Germany and Austria, there is a slow increase in the usage of referendums. This has relates to attempts by opposition parties to organize referendums as well as organizations like *Mehr Demokratie* that try to organize referendums. For a true referendum culture to develop, many years of usage are required (Welan 2000). It is thus likely that it will take some time before Germany and Austria are mentioned together with Switzerland as countries with clear referendum cultures.

In the Netherlands, there has been no recent experience with deciding referendums as the reform was not passed. The only, informal, exception at the national level was the consultative referendum on the Constitution for the European Union in 2005. This referendum was informally a deciding referendum, as political parties had announced that they would follow the outcome of the referendum. The outcome of the referendum was not the outcome desired by many political parties, but parties respected the result as promised. Afterwards, no subsequent 'advisory' national referendum has been organized. Reasons for the no-vote of Dutch citizens can be sought in many directions, including fear of the loss of national identity and distrust of the political sphere (Lubbers 2007). If the Dutch would have had ample experience with such referendums another result might have followed. Perhaps the distrust of the political sphere would not be so pervasive, for instance. One could argue that the electoral loss of the VVD in the first election for the *Tweede Kamer* after the rejection of the referendum in the *Eerste Kamer* was an effect of the failure to introduce the corrective referendum on political parties in the Netherlands. However, the other coalition parties of the second Purple Cabinet lost seats as well. This makes it unlikely that the failure to introduce the corrective referendum was the decisive factor for this electoral loss.

The wider effects of the reform processes are not as prominent or unquestionable as the direct effects of the reforms. It has become clear that the reform processes did have immediate effects on the political sphere in the countries under review, although the reform processes

did not change the historical patterns of a political culture overnight. It takes time for changes to become ingrained. The rejection of some Dutch politicians to vote in favor of the constitutional changes required for direct elections of mayors, and the corrective referendum contrasts sharply with the actions of German and Austrian politicians. With the knowledge of the different reform cases in mind, such rejections are all the more striking. In all three countries, many people supported the democratic reforms that were proposed, but only in the Netherlands were reforms blocked. The German and Austrian cases clearly show that federal states are not reform-blocking constructions in all circumstances (Scharpf 1988; Kriesi and Wisler 1996; Tsebelis 2002). On the subnational level, a federal state structure can make reform more plausible because it often makes local initiatives easier and cross-state and bottom-up learning more plausible.

The traditional big political parties in the Netherlands have not shown sensitivity to policy preferences of citizens as regards the democratic reforms researched in this study. The topics have been seen as D66-topics. When Parliament does not allow citizens to make a relatively harmless choice, such as electing what person will be their mayor for several years, it is perhaps only logical that citizens become less satisfied with politics. When politicians do not want to give power back to the people that gave them power in the first place, this can become a cause for concern for citizens. It could stimulate voters to look for more appealing candidates to cast their votes on. Respondents in Germany and Austria suggested that issues such as the referendum and direct mayoral elections are populist proposals that a political party cannot block without political cost, once the proposal is put on the political agenda. Politicians in the Netherlands did not seem to agree with this suggestion. Dutch politicians did consider potential electoral effects of their voting behavior, but the reforms were blocked nonetheless.

Whether the reforms in Germany and Austria have improved these democracies in good governance terms compared to the Netherlands, or whether the reforms have been mainly symbolic (for more on this topic see: Ringeling 1993), is not something that will be answered in this epilogue. A fair question that can be posed is whether blocking a reform, as has been done in the Netherlands, is a wise decision, when so many citizens support the proposed reform. Blocking a reform that can count on wide support is bound to have some political consequences, even if the matter is not very salient.

On the one hand, the Netherlands scores better than Germany and Austria on some indicators of political satisfaction discussed in this epilogue, despite the absence of reform. This could lead to the argument that non-reforming did not matter all that much, or even that reforming was a bad option. On the other hand, we also have to consider the complex nature of advanced democracies and the failure of predicted detrimental effects of the reforms to occur in Germany and Austria. Whether reforming or non-reforming was the wiser course to follow will undoubtedly become clear in due time.

Summary in English

Chapter 1 starts with the observation that much has been written about democracy by authors from various disciplines. Political science has focused on such things as the empirical classification of democracies into different systems, or different ideal types (Lijphart 1999; 2008; Hendriks 2010). Despite the wide variety of forms of democracy there are relatively few shifts from one type of democracy to another type (Held 2006; Renwick 2010; Leyenaar and Hazan 2011; Pilet and Bol 2011). The Netherlands can be seen as a country where few sweeping democratic reforms have taken place despite popular demands (Andeweg 1989; Andeweg and Thomassen 2011; 2011b).

What constitutes democratic reform depends on the interpretation of democracy one has. Dahl distinguishes five basic criteria a democracy needs to have (Dahl 2000). Lijphart distinguishes two dimensions, an executive-parties dimension and a federal-unitary dimension, which he uses to score different countries. All the countries Lijphart traced show some development, some more than others. While most countries move towards a more consensual type of democracy, the Netherlands, Germany and Austria move in a different direction (Lijphart 1999; 2008). Hendriks develops a typology based on two dimensions (aggregative-integrative and direct-indirect) which can be used to understand different types of democracies (Hendriks 2010).

To be able to say something about democratic reforms it was decided to look at specific reform processes. The Netherlands was selected as the central case for research, so the cases should take place in comparable countries with in terms of political culture and in terms of the reforms at hand. These countries were Germany and Austria. Germany and Austria discussed the introduction of directly elected mayors and referendum possibilities in the same period as the Netherlands (Lijphart 1999; Flinders 2009; Loughlin and Hendriks 2011). Importantly, Germany and Austria seemed to have had more success with their introduction processes.

Democratic reforms are especially interesting because of the changes that have taken place in society after the Second World War. The state has lost its central position in society due to globalization and the rise of network society (Castells 2000), the values and orientations of citizens have changed (Inglehart 1977; 1997), and trust in different parts of government and politics has been declining (Stoker 2006; Hay 2007). The response of governments to these changing demands of citizens, especially considering the popularity of some democratic reforms (Hendriks, Van Ostaaijen et al. 2011), is important for the future development of democracy.

The central question that followed from the introductory chapter was:

How can we understand democratic (non-)reform – more specifically reform regarding the referendum and the elected mayor – in the Netherlands, Germany, and Austria?

Chapter 2 was built around a guiding theoretical question that followed from the central question: *“How can we understand processes of democratic reform from a theoretical perspective?”* This question led to an exploration of different theories that had something to say about processes of democratic reforms. These theories were thus not solely focused on democratic

reforms, but offered a valuable variety of insights that would help to understand these reform processes.

There is an overwhelming amount of political scientific literature available. In recent contributions, attempts have been made to cluster different groups of approaches together (Olsen 2009; Schmitter 2009; Ziemann 2009). One central distinction is made between institutional theories that focus on the rationality of actors and institutional theories that focus on historical patterns and continuities. As the case-study approach used for this study allows many aspects to be taken into account, no choice for one of these two approaches was made.

The different institutional approaches stem from New Institutional theories that were developed in the 1980s. These theories were purposefully vague or even contradictory at times. This allowed many authors to pick only those elements that suited them for their analysis, on the one hand, but led to the development of quite divergent theories under the same heading, on the other. Institutionalisms nevertheless remain popular, as social phenomena are rarely explained by one-dimensional approaches. For the theoretical understanding of democratic reforms, it was concluded that at least three aspects of reform processes should be dealt with:

1. Some account of the formal institutional structure and procedural requirements that are in place;
2. Some account of the actors involved in the reform process, and;
3. Some account of the context against which change is taking place

Most accounts of institutional structures and procedures are used to explain why change does not happen (Scharpf 1988; Tsebelis 2002; Scharpf 2006). Tsebelis develops an approach that works with veto players. Veto players are actors (often aggregated actors such as Parliaments, but occasionally individuals such as a President) that can veto a proposal. Tsebelis argues that the more veto players there are, the less likely reform will be. Scharpf focuses on the interconnections layers of government and argues that the more different governments have to agree on a decision, the less likely reform will be. Especially federal states are often the victim of these *Politikverflechtungsfälle*. Barrier models were also discussed. These models see political decision making as a series of negotiations between political actors in which different barriers have to be faced (from cultural barriers to legal barriers) in order to arrive at a decision (Koppenjan 1993; Koppenjan and Klijn 2004).

In the subsection that deals with the role of actors in reform processes, four main theoretical approaches were discussed. First, approaches that see actors and the interactions between these actors as rational transactions were discussed (Kiser and Ostrom 1982; Ostrom 2006). Then approaches that see the development of institutions to some extent as a process of institutional design (Goodin 1998). Third, approaches that see policy processes as a series of interactions between actors in networks were discussed (Koppenjan 1993; Koppenjan and Klijn 2004; Renwick 2010). Finally, the role of leadership as something that plays a role in reform processes was discussed ('t Hart 2000; Boin and 't Hart 2003; 't Hart 2011).

In the subsection on context, different approaches were introduced that discuss the role of the external environment on reform processes. Processes of reform can be influenced by events that happen outside of the reform process, but are related to the reform at hand in some way (Baumgartner and Jones 1993; Kriesi and Wisler 1996). A debate about fire regulations will be influenced by a terrible fire for instance.

These three aspects of reform theories were then reconnected to show that these different aspects of reform processes influence one another. The result of a reform process will depend on the interplay between institutional structures, political actors, and a wider context. In the analytical framework these aspects are used to develop research questions for the empirical cases. The following questions were posed:

1. *What formal procedure has to be followed in order to get the reform passed?*
2. *What actors are involved in the process, what seem to be the goals of these actors, and how do they try to achieve these goals?*
3. *Against what historical background did the reform processes take shape and what case-specific situational circumstances seem to be of influence?*

The first question is case specific, as we will see, but it can be used to get to know the institutional structure in place. The third question deals with two aspects of the wider context. On the one hand the historical background is the topic of investigation, which will be quite similar in each country, on the other hand more reform specific situational circumstances will be looked at.

The final subsection of **Chapter 2** discusses the research tools and methods used in the empirical cases. It is made clear that the study uses three main sources of information for the cases studied: Interviews with relevant actors, case specific documents such as white papers and minutes of parliamentary meetings, and academic and other literature that have information about the reform processes. For the German cases, the main source of information was academic literature, as much academic research had already been done regarding the reform processes.

Chapters 3, 4 and 5 discuss the three countries in which the reform cases took place. **Chapter 3** examines the Netherlands. Briefly, the historical development of the Netherlands is discussed, from the Republic in the 17th century to the caretaker-state of the late 20th century. It is made clear that Dutch politics is fragmented due to the highly proportional system in place. The role of the *Tweede Kamer* and *Eerste Kamer* is discussed, which includes the powerful role the *Eerste Kamer* actually has, despite the fact that most citizens regard the *Tweede Kamer* to be the main representative body.

The attempted introduction of direct mayoral elections in the Netherlands was a process that started in 1994, although there had been debate about the possibility for a long time. Several State Commissions had even investigated the possibility. In order to get direct mayoral elections in the Netherlands a constitutional amendment was required that would remove the provision that the mayor is appointed by the Crown. In order to do so, four voting rounds were

required: Two in both the *Tweede Kamer* and *Eerste Kamer*, the second ones with a qualified majority. Whilst the second reading in the *Eerste Kamer* was awaited, the final voting round before the normal legislation could be introduced, Minister De Graaf sent a memorandum on the legislative proposal that would follow to the *Tweede Kamer*. This led to debates on the exact nature of the directly elected mayor that would follow.

Fundamentally there were three options for the appointment or election of the mayor:

1. Appointment by the Crown
2. Indirect elections by Municipal Councils
3. Direct election by Citizens

There was a clear majority in both Houses of Parliament for the second or third option, and thus for the deconstitutionalization. However, in this final vote that was required to get the constitutional amendment passed, the PvdA (the Dutch Labor party) voted against the proposal because the members of that party wanted indirect elections. This effectively stopped the reform process. Temporary provisions such as the mayoral referendum were also removed afterwards.

The attempted introduction of the corrective referendum ended several years earlier, also in the *Eerste Kamer*. In the case of the referendum, this was not caused by the blocking vote of an entire political party, but mainly due to two Senators. Hans Wiegel of the VVD voted against his party-line on the matter, and Senator Batenburg changed his position relative to the previous voting round. This meant that the constitutional amendment did not manage to get the required two-thirds majority in the *Eerste Kamer* and was blocked.

The comparative analysis of these two Dutch reform processes highlights the role of Dutch political parties. They are not inclined to introduce democratic reforms. There is one political party in the Netherlands, D66, that has specifically attempted to introduce democratic reforms. There have been some smaller successes, but large scale reforms have not taken place. One reason is that other political parties see these issues as D66-issues and do not feel inclined to do something with them. They know how big D66 has grown, so they do not fear them as an electoral threat all that much. Individual politicians only stand out because of their role in blocking the reform. Other actors than political parties played a role, but especially in the reform to introduce direct mayoral elections. In that case, other actors, such as interest groups for aldermen, generally reacted unfavorably to reforms. There were no situational circumstances that were interpreted by politicians in general as a cause for democratic reform.

These experiences can be contrasted with the German reform experiences that are examined in **Chapter 4**. Germany is a federal republic and in Germany the arrangement of the election of mayors is decided on at the *Länder* (federal state) level. When the reform process got started there were several models for local democracy in use in the *Länder*. These were the:

- The North German Municipal Constitution (*Norddeutsche Ratsverfassung*)
- The South German Municipal Constitution (*Süddeutsche Ratsverfassung*)
- The Magistrate Constitution (*Magistratsverfassung*), and
- The Mayoral Constitution (*Bürgermeistersverfassung*)

The South German model, was the model in Baden-Württemberg and Bavaria. In it, mayors were directly elected by citizens. The other *Länder* all had different arrangements. There was some pressure to introduce direct mayoral elections from organizations such as *Mehr Demokratie e.V.* and the KGSt (an interest group for municipalities), but the most important move towards the introduction of direct mayoral elections was taken in Hessen. The Prime Minister, Walter Wallmann, tried to stop his CDU from losing the elections by organizing a referendum on a popular initiative (direct mayoral elections). In order to change the Constitution of Hessen, a referendum is required. The voters of Hessen massively supported the reform (82% voted in favor) but the CDU nevertheless lost the elections.

After Hessen made this reform move, others started to follow. The SPD or CDU would pressure one another towards reform, threatening to organize popular initiatives themselves in several instances. This was a good tactic, as opinion polls showed Hessen-like support for the reforms in other *Länder*. A final push towards the reform was given by the former East German *Länder*, who opted for the South German model en masse.

In the case of the referendum, there was some provision in most *Länder* in the beginning of the 1990s. The last *Länder* to introduce the referendum at the state level were Schleswig-Holstein, Lower Saxony, and Hamburg (as well as the East German states). The process in these states started with the Barschel-affair in Schleswig-Holstein, in which the Prime Minister of Schleswig-Holstein got involved in a political scandal involving political eaves-dropping. This forced Barschel to resign. Later he was found dead in a hotel in Switzerland under mysterious circumstances.

The scandal led to political upheaval in Schleswig-Holstein and created political urgency to reform the state Constitution. More transparency and openness was deemed necessary, and the reforms included the introduction of the referendum. This simultaneously meant that Lower Saxony would be the only (non-city state) *Land* without this referendum-possibility which created pressure to reform in Lower Saxony.

The comparative analysis of the German cases showed that political parties are important, but so are other aspects of the reform processes. In Germany, there was more room for leadership, in a 'positive' sense such as exerted by Wallmann, or in a 'negative' sense such as exerted by Barschel. However, this leadership was effective because of the federal structure of Germany. Reforms in one *Land* would be seen as a benchmark in another *Land*. Lower Saxony did not feel at ease being the only *Land* to withhold a democratic instrument from its citizens. A final push was provided by the presence of direct democratic instruments in German *Länder*. If the CDU or SPD did not want to introduce direct mayoral elections, the opposition party could turn the reform into an electoral issue and threaten with initiatives. This has proven itself to be an effective strategy to get reform passed, as all normal German states now have direct mayoral elections.

In **Chapter 5**, the Austrian cases were examined. The Austrian case of direct mayoral elections can be placed between the Dutch and German experiences. It consisted of a series of *Länder* introducing the reform, but there was also a role for the national Parliament in the

reform process. The first *Länder* to introduce direct mayoral elections were Carinthia and Tyrol. Carinthia did so under pressure from the Haider-led FPÖ. In Tyrol, the FPÖ was in favor of the reform too, but so were the SPÖ and ÖVP. Tyrol was inspired by the South German and Swiss experiences, as well as the reform in Hessen. However, after these first reforms had taken place, a case was brought to the Austrian Constitutional Court that prompted the Court to deem the reform unconstitutional.

The verdict stopped several *Länder* that had also initiated the introduction process, and provided work for the *Nationalrat* and *Bundesrat*. The *Bundesrat* did not have a veto in the matter, but could delay the introduction process. This did not happen as there were no politicians in the SPÖ and ÖVP that wanted to risk upheaval by disallowing *Länder* to choose if they wanted to let their citizens elect mayors. The calculation was that to block the reform would cost them electorally and make the FPÖ grow further, whilst going along with the reform would not be all too problematic. After the constitutional amendment was passed several other *Länder* introduced the possibility, with Vienna (where it is not allowed as it is a city-state) and Lower Austria as the current exceptions.

The introduction of the consultative referendum at the national level in the 1980s was uneventful. It followed experiences around a deciding referendum about a nuclear power plant at Zwentendorf. This power plant had been built, but there were many protests, which led to the question: Should it be turned on? The answer of the Austrian electorate (by a very small margin): No. The events helped the development of the *Grünen* as a political party in Austria. These two events led to the thought that it might be a good idea to consult citizens upfront when a controversial decision such as this was to be taken. Better that, than another fiasco such as with Zwentendorf. Furthermore, it might stifle the growth of the *Grünen* a bit. It did not cost politically, but might offer benefits.

The Austrian cases are clear cases of political calculation and respondents were quite open about this. The FPÖ tried to break the two-party system dominated by the SPÖ and ÖVP open, and these two parties tried to stop the rise of the FPÖ (particularly) and the *Grünen*. In these cases too, it helped that the direct mayoral elections were to be arranged at the *Länder* level. This made subsequent introductions possible. Furthermore, groups such as *Mehr Demokratie e.V.* and the Austrian *Gemeindebund* (where mostly mayors represented their municipalities) were in favor of the reform.

In **Chapter 6** the comparison of these reform processes was analyzed comparatively and conclusions were formulated. The comparison showed that the reform cases in the Netherlands generally had the most difficult procedure to get passed: There were more voting rounds and more stringent majorities required to reform than in Germany and Austria. Furthermore, the federal structure in Germany and Austria, as well as the availability of instruments such as initiatives in some instances, made that there was more pressure on political parties to do something with the reform proposals.

When it comes to the actors involved in the reform processes, there are differences and similarities. One similarity is that civil servants did not play a decisive role in the reform processes, they were dominated by political parties. Political parties made different calculations in the Netherlands, Germany and Austria. In the Netherlands, the traditional big parties (CDA, PvdA, and VVD) were not really worried about the electoral repercussions of voting against democratic reform. Reform was seen as a D66-topic and the reform agenda had never provided D66 with such numbers of parliamentary seats that political action was seen as necessary. In Germany, the call for democratic reform (possibly backed by threats to organize referendums) was a game of political fencing between CDU and SPD, where not going along with a reform proposal could cost the party the elections. In Austria the two *Großparteien* (ÖVP and SPÖ) feared the rise of the FPÖ and the *Grünen*, which translated into votes for reforms.

To some extent, it helped that in Germany and Austria there were clear and powerful lobbies (*Mehr Demokratie e.V.*, KGSt, *Gemeindebund*) arguing the case for reform, whilst this was not the case in the Netherlands. There were also more instances of reforming leadership in Germany, while the Netherlands saw leadership blocking reforms. In this respect, it is interesting that the demands for reforms seems to be equally strong in all countries: When asked in referendums or opinion polls if mayors should be elected directly, large majorities in favor of the reform appear. Whether reform is politically salient, is another question.

The wider context of the reform cases shows similarities in terms of the development of electoral preferences (more post-modernism), but there are notable differences. The historical background differs, with Germany and Austria having a different role in the Second World War. This difference might have changed the interactions between citizens and political parties. Politicians in Germany (and Austria) might have some general insecurity because of their history. Losing legitimacy is something to be avoided at all cost. More striking though, are the situational circumstances that influenced the reform processes. Whilst Germany had to deal with a political scandal, an extreme referendum result in Hessen, and the reunification, and Austria Zwentendorf and the rise of the *Grünen* and FPÖ, the Netherlands did not have situational circumstances that led to a guiding reform discourse. The way these processes developed was summarized in the Figure 6.1.

The following conclusions were formulated based on the comparison:

- a) The introduction of direct mayoral elections and the corrective referendum in the Netherlands was more difficult, due to the more rigid formal procedure in the Netherlands and absence of referendums within the system that could be used to pressure politicians towards a reform, such as in Germany and Austria.
- b) Germany and Austria showed that federal structures and referendum possibilities within these structures can help reforms get implemented; federal states tend to be comparable and arguments against reforming lose power after some states have introduced a specific reform.

- c) A reform is less likely to take place if it is perceived to differ widely from the institutional structure in place, as there will be more uncertainty about its effects: Big bang reforms like the ones proposed in the Netherlands will be more difficult to bring about than gradual changes.
- d) Popular support is helpful but not sufficient for democratic reform to be introduced: In all cases, the reforms were supported, but this did not lead to reform in all cases.
- e) Dutch politicians interpreted representative democracy more radically than their German and Austrian counterparts: Dutch politicians felt free to disregard public opinion, Austrian and, especially, German politicians took public opinion more seriously.
- f) Leadership mattered in the reform cases, but there is not one winning leadership style that emerged from the reform cases discussed in this study.
- g) German and Austrian politicians more readily than Dutch politicians saw electoral shocks (referendum results, volatility) as events that required a serious response, such as a reform.
- h) Crises helped the reform processes move forward, although perhaps more so in Germany and Austria than in the Netherlands.

These conclusions were used to reflect upon claims made in the literature that was discussed in **Chapter 2**. The result thereof was formulated in three hypotheses:

- 1) The more rigid the procedure, the less likely democratic reform is, unless citizens and opposition parties can push an issue onto the political agenda using initiatives and/or referendums and thus force opposing political forces into action.
- 2) The more direct democratic answerability is, the more likely it is that politicians take public opinion into account.
- 3) In the case of consensus democracies, where multiple parties have to agree on a democratic reform, political parties need to have a tangible reason to reform, otherwise no agreement to change existing power structures will be made.

The first hypothesis should be read in relation to authors that have written about veto players, and authors that have stated that the Netherlands has seen no reform cases because the procedure for the reforms that were debated was more difficult than the procedures in other countries (Kiser and Ostrom 1982; Andeweg 1989; 1997; Tsebelis 2002; Ostrom 2006; Tsebelis 2008). The second hypothesis regards the political actors involved in these reform processes. A commonality between the reform cases was that, although other actors such as lobby groups and citizens did play a role, political parties dominated the researched reform processes. A difference between the Netherlands, German and Austrian was the way political parties dealt with public demands for reforms. The final hypothesis regards the wider context of the reform case. We have seen that there are theories that deal with crisis or some shock that causes ingrained policies or political structures to change, although stability seems like the logical option for those political parties in power (Baumgartner and Jones 1993; Kriesi and Wisler 1996; Leyenaar and Hazan 2011). The wider context only matters when it is perceived by political parties to be salient.

Finally, **Chapter 7** discusses some of the implications of the reform processes: Do the reform processes matter? There are two aspects of the (attempted) reforms that are distinguished in the epilogue: The immediate effects of the (attempted) reforms, and the wider effects of the (attempted) reforms. In the Netherlands, the two cases of non-reform led to two coalition crises that were both easily fixed afterwards. In the German and Austrian cases, the introduction of direct mayoral elections has changed the process of local democracy, but not dramatically. The fears of cohabitation proved to be overstated (it did not cause mayor problems, but instead more consensus oriented mayors), and direct mayoral elections were not dramatically different from the informal arrangement that the leader of the biggest party would become mayor.

In terms of the wider effects, they are less easily assignable. The trends in terms of trust in democracy are generally similar in the three countries, be it that East Germany mostly scores lower on many indicators of trust in and satisfaction with democracy. To look at the potential wider effects of the reforms data from the European Value Studies (EVS) were used. The EVS provided several indicators that were more pertinent than those in the Eurobarometer. The data provide some indicators that reform in the Netherlands is not moving fast enough according to the respondents of the EVS, and that satisfaction with the way democracy has developed has declined too.

The data do not provide definite answers to the wider effects of the (attempted) reforms, but the combination of data is interesting. The reforms in Germany and Austria did not have terrible effects, so why would reform in the Netherlands be so detrimental? The wider developments as interpreted from the EVS data do show some differences, so the question becomes where these differences come from. It is possible that any one thing could have caused the sometimes relatively low score of the Netherlands on some measures. At the same time, we cannot exclude the possibility that the failure to implement democratic reforms has something to do with these scores. Whether reforming or non-reforming was the wiser course to follow will undoubtedly become clear in due time.

Samenvatting in het Nederlands

Hoofdstuk 1 begint met de constatering dat er veel geschreven is over democratie door auteurs met een veelheid aan achtergronden. De politicologie heeft daarbij aandacht besteed aan zaken als het classificeren van democratieën in verschillende typen of systemen en het uitwerken van verschillende soorten ideaaltypen (Lijphart 1999; Held 2006; Lijphart 2008; Hendriks 2010). Ondanks dat er veel verschillende vormen van democratie zijn, zijn er relatief weinig veranderingen van het ene democratische systeem naar een ander systeem (Held 2006; Renwick 2010; Leyenaar and Hazan 2011; Pilet and Bol 2011). Dit laat zich ook verklaren: waarom zou je (in een democratische context) immers een systeem veranderen dat je politieke macht heeft gebracht? Het is wellicht ook niet verrassend dat Nederland, ondanks steun onder de bevolking voor bepaalde democratische hervormingen, niet bekend staat als een land waar veel grootschalige democratische hervormingen hebben plaatsgevonden (Andeweg 1989; Hendriks 2010; Andeweg and Thomassen 2011; 2011b).

Wat precies als democratische hervorming kan worden gezien hangt af van de interpretatie die men aanhangt van wat de democratie precies behelst. Dahl onderscheidt vijf criteria waaraan een democratie zou moeten voldoen (Dahl 2000). Lijphart onderscheidt daarentegen twee dimensies, een executieve-partijendimensie en een federaal-unitaire dimensie. Hij gebruikt deze dimensies om landen op verschillende indicatoren te scoren. Op basis daarvan kan hij landen in verschillende kwadranten plaatsen (Lijphart 1999; 2008). Alle landen die Lijphart heeft bestudeerd verplaatsen zich door de tijd heen in zijn assenstelsel. Dit betekent dat er hervormingen hebben plaatsgevonden in die landen. Terwijl de meeste landen in de richting van de consensusdemocratie opschuiven, blijken Nederland, Duitsland, en Oostenrijk juist (weliswaar nog binnen het consensusdemocratische kwadrant) in de tegenovergestelde richting te bewegen. Ook met behulp van de typologie van Hendriks, waarin hij een onderscheid maakt tussen twee dimensies (aggregatief-integratief en direct-indirect) kunnen democratisch hervormingen geduid worden (Hendriks 2010).

Om iets te kunnen stellen over democratische hervormingsprocessen is het noodzakelijk om naar vergelijkbare cases te kijken. Die vergelijkbaarheid is enerzijds in termen van politieke cultuur te vatten, anderzijds in termen van het type hervorming. Duitsland en Oostenrijk zijn al genoemd als landen die ongeveer hetzelfde gescoord worden door Lijphart, maar deze landen blijken in meer gevallen vergelijkbaar te zijn. Zo kan ook de staatstraditie van de landen genoemd worden als een vergelijkbaar punt (Lijphart 1999; Flinders 2009; Loughlin and Hendriks 2011). Daarnaast blijkt het zo te zijn dat ook in Duitsland en Oostenrijk (in grofweg dezelfde periode) als in Nederland pogingen zijn ondernomen om de direct gekozen burgemeester en referendummogelijkheden in te voeren, zij het dat deze pogingen succesvoller lijken te zijn geweest dan de Nederlandse pogingen.

Democratische hervormingen zijn temeer belangwekkend vanwege de veranderingen die zich na de Tweede Wereldoorlog hebben voorgedaan. Waar de verzorgingsstaat na de Tweede Wereldoorlog steeds groter kon groeien, zien we langzaamaan die rol weer kleiner worden. Zo is de staat tegenwoordig vaak nog maar één partij van de velen in netwerkachtige verban-

den geworden (Castells 2000). Daarnaast blijken de waarden van burgers ook te veranderen waardoor traditionele politieke partijen het soms moeilijk hebben (Inglehart 1977; 1997). Tenslotte zien we ook een afname van het vertrouwen in de overheid en de democratie op veel punten (Stoker 2006; Hay 2007). Gezien dit soort ontwikkelingen is een adequate reactie van de overheid van belang. Een mogelijke oplossing voor een veranderende relatie tussen burger en staat is democratisch hervormen, een optie die door veel burgers in opiniepeilingen gesteund wordt (Hendriks, Van Ostaaijen et al. 2011).

Op basis van het voorstaande is de volgende hoofdvraag geformuleerd:

Hoe kunnen we democratische (non-)hervormingen begrijpen – specifiek de gevallen van de invoering van de direct gekozen burgemeester en het referendum – in Nederland, Duitsland en Oostenrijk?

Hoofdstuk 2 tracht een antwoord te geven op de vraag hoe we democratische hervormingsprocessen vanuit een theoretisch perspectief kunnen begrijpen. In het hoofdstuk worden verschillende theorieën behandeld die een bijdrage kunnen leveren aan het doorgronden van het verloop van democratische hervormingsprocessen. Dit betekent dat er voornamelijk gekeken wordt naar theorieën die iets te zeggen hebben over democratische of institutionele hervormingsprocessen, maar dat er soms ook gekeken wordt naar andere theorieën die interessante perspectieven bieden op democratische hervormingsprocessen.

In een aantal recente bijdragen aan het academisch debat is getracht de hoeveelheid aan verschillende theoretische bijdragen te ordenen en clusteren (Olsen 2009; Schmitter 2009; Ziemann 2009). Een van de belangrijkste onderscheiden die daarbij gemaakt worden is die tussen institutionele theorieën die gericht zijn op de rationaliteit van actoren en hun handelingen en theorieën die gericht zijn op patronen van historische continuïteit anderzijds. Omdat er in dit onderzoeksproject gewerkt is met een case study aanpak is er echter niet voor gekozen om voor één van deze twee kampen te kiezen, maar juist beide aspecten mee te nemen om als sensitizing concepts te gebruiken en zodoende meer (maar niet volledig) inductief te kunnen achterhalen wat er daadwerkelijk van belang was in de cases.

Een groot gedeelte van de theorieën die iets te zeggen hebben over de ontwikkeling van democratische instituties treden in de voetsporen van de nieuwe institutionele (*New Institutionalism*) theorieën die in de jaren '80 zijn ontwikkeld, of zijn daar op een andere manier schatplichtig aan. Een kenmerk van de theorieën die destijds zijn ontwikkeld is dat ze soms bewust vaag of schijnbaar tegenstrijdig waren. Dit doet enerzijds recht aan een sociale werkelijkheid die vaak ingewikkelder in elkaar steekt dan in één model gevat kan worden. Doordat er ambiguïteit in de theorie zat konden veel auteurs een aspect uit de theorie pakken en ermee aan de slag gaan. Anderzijds leidde het tegelijkertijd tot een veelheid aan theorieën die in de institutionele traditie geplaatst konden worden.

Om tot een gedegen begrip te komen van democratische hervormingsprocessen moet er op zijn minst iets gezegd worden over:

1. De formele institutionele structuur en de procedures die gevolgd moeten worden bij een hervorming;
2. De actoren die betrokken zijn bij het proces, en;
3. De context waarin het hervormingsproces zich afspeelt

Institutionele theorieën zijn veelal eerder gericht op het uiteenzetten waarom veranderingen niet plaatsvinden (Scharpf 1988; Tsebelis 2002; Scharpf 2006). Tsebelis werkt bijvoorbeeld met het begrip ‘veto speler’. Het gaat daarbij om actoren (vaak samengestelde actoren zoals een parlement, maar af en toe ook individuen zoals een president) die in een formeel besluitvormingsproces moeten toestemmen voordat een beslissing kan worden genomen. Als zo’n speler niet instemt komt een beslissing niet tot stand en gebruikt hij dus zijn veto. Hoe meer veto spelers er betrokken zijn bij een besluitvormingsproces, hoe kleiner de kans dat er een beslissing wordt genomen. Scharpf analyseert op een vergelijkbare wijze de moeilijkheid om op federaal niveau tot beslissingen te komen in Duitsland. Er is volgens Scharpf sprake van een *Politikverflechtungsfalle*. Er zijn zoveel verschillende overheidslagen die moeten instemmen met een hervorming, dat het erg moeilijk is om tot beslissingen te komen. Ook was er aandacht voor barrièremodellen. Deze modellen zien politieke besluitvormingsprocessen als series onderhandelingen tussen politieke actoren die daarbij allerlei barrières moeten slechten (van cultureel tot juridisch) om tot een beslissing te kunnen komen (Koppenjan 1993; Koppenjan and Klijn 2004).

In de paragraaf over actoren zijn vier theoretische benaderingen besproken. De eerste benadering is de rationele actor benadering, waarin actoren en de interacties tussen deze actoren als rationeel worden beschouwd (Kiser and Ostrom 1982; Ostrom 2006). De tweede benadering ging in op benaderingen die gericht zijn op het ontwerpen van instituties (Goodin 1998). Ten derde worden er netwerkbenaderingen besproken (Koppenjan 1993; Koppenjan and Klijn 2004; Renwick 2010). Tenslotte is er stilgestaan bij de rol van leiderschap in hervormingsprocessen (‘t Hart 2000; Boin and ‘t Hart 2003; ‘t Hart 2011).

In de paragraaf over de context van hervormingsprocessen is stilgestaan bij verschillende zaken die extern zijn aan het hervormingsproces, maar wel invloed kunnen hebben. Gebeurtenissen buiten het hervormingsproces kunnen in verband gebracht worden met de hervorming en daarmee het verloop van een hervormingsproces beïnvloeden (Baumgartner and Jones 1993; Kriesi and Wisler 1996). Een debat over dijkverzwaring zal bijvoorbeeld beïnvloed worden door een overstroming. De context bestaat, aan de ene kant, uit een historisch perspectief dat voor de landen als geheel redelijk overeenkomt. Aan de andere kant zijn er situationele omstandigheden die specifiek van invloed zijn op een hervormingsproces.

Deze drie elementen grijpen op elkaar in, en afhankelijk van het specifieke hervormingsproces zullen zowel de institutionele structuur, politieke actoren, en de bredere context in meer of mindere mate van belang zijn. In het analytisch raamwerk worden er daarom vragen gesteld over alle drie deze aspecten. De volgende vragen zijn gebruikt om de empirische casus te analyseren en het onderzoek te focussen:

1. Welke formele procedure moet gevolgd worden om de hervorming te introduceren?
2. Welke actoren waren betrokken bij het proces, wat schijnen de doelen van deze actoren te zijn geweest, en hoe probeerde ze deze doelen te behalen?
3. Tegen welke historische achtergrond spelen de hervormingen zich af en welke situationele omstandigheden zijn van invloed op het hervormingsproces?

De eerste vraag is gericht op de individuele cases, maar wordt later gebruikt om iets over de institutionele structuur te kunnen zeggen. De tweede vraag gaat in op de verschillende actoren (niet noodzakelijk alleen politieke partijen) die betrokken zijn bij de hervormingsprocessen. De derde vraag gaat in op twee aspecten van de bredere context.

In de laatste paragraaf van **hoofdstuk 2** wordt er stilgestaan bij de gehanteerde onderzoeksmethoden en technieken bij het empirisch onderzoek. In het onderzoek worden drie bronnen gebruikt: interviews met relevante actoren, het bestuderen van case specifieke documenten (zoals beleidsnota's en notulen van parlementaire vergaderingen), en academische literatuur die informatie verschaft over de ontwikkeling van het hervormingsproces. Voor de Duitse case betekende dit dat deze laatste bron de belangrijkste was, aangezien er in Duitsland al veel academisch onderzoek was gedaan naar de hervormingsprocessen die centraal stonden in dit onderzoek. In Nederland en Oostenrijk is het onderzoek in grotere mate op de eerste twee bronnen gebaseerd.

In **hoofdstuk 3, 4 en 5** wordt ingegaan op de hervormingsprocessen. In **hoofdstuk 3** staat Nederland centraal. Kort wordt de historische ontwikkeling van de Nederlandse politiek geschetst. Daarbij is er ook aandacht voor de rol van de Tweede en Eerste Kamer, en de relatief sterke positie die de Eerste Kamer heeft ondanks de focus van het grotere publiek op de Tweede Kamer.

De poging om direct gekozen burgemeesters in Nederland in te voeren was een proces dat weliswaar een lange voorgeschiedenis kende, maar echt van start ging in 1994 met het eerste Paarse kabinet. Voor 1994 waren er al verscheidene staatscommissies geweest die iets over het onderwerp te melden hadden gehad. Om direct gekozen burgemeesters mogelijk te maken diende de benoeming van de burgemeester door de Kroon gedeconstitutionaliseerd te worden. Om dat te bewerkstelligen zijn er vier stemmingen nodig: twee in de Tweede Kamer en twee in de Eerste Kamer. In de tweede ronde stemmingen is in beide Kamers een tweederde meerderheid nodig.

Door de manier waarop het proces verliep werd er door Minister De Graaf al een hoofdlijnennotitie over de vormgeving van het normale wetsvoorstel over de gekozen burgemeester geïntroduceerd in de Kamer, terwijl de tweede lezing van het voorstel tot deconstitutionalisering nog in de Eerste Kamer lag. Hierdoor ging ook in de Eerste Kamer het debat over het wetsvoorstel dat zou volgen op de deconstitutionalisering. Er zijn drie aanstellingswijzen mogelijk:

1. Benoeming door de Kroon
2. Indirecte verkiezing door de gemeenteraad
3. Direct gekozen door de bevolking

In zowel de Eerste Kamer als de Tweede Kamer was er een duidelijke meerderheid te vinden voor de tweede of derde optie, en zodoende voor de deconstitutionalisering. Omdat echter bekend was dat er een voorstel tot introductie van direct gekozen burgemeesters zou volgen (en dit voorstel gesteund werd door de regerende coalitie) wist men dat het voorstemmen voor de deconstitutionalisering met aan zekerheid grenzende waarschijnlijkheid de direct gekozen burgemeester tot gevolg zou hebben. De PvdA was voor indirecte verkiezingen, dat kwam ook uit een ledenstemming naar voren. De Eerste Kamerfractie van de PvdA stemde dus tegen de deconstitutionalisering (waar de Tweede Kamerfractie wel voor had gestemd onder druk van Wouter Bos), en daardoor lukte het niet om een tweederde meerderheid te behalen. Dit beëindigde het hervormingsproces. Tijdelijke voorzieningen zoals het burgemeestersreferendum werden later ook niet verlengd.

De gepoogde invoering van het correctief wetgevingsreferendum vond enkele jaren eerder plaats. Ook dit grondwetsvoorstel sneuvelde in tweede lezing in de Eerste Kamer. Dit keer was het geen hele partij die tegenstemde, maar ging het om slechts een enkele stem. Senator Wiegel stemde tegen de lijn van zijn partij, de VVD, in en omdat ook senator Batenburg tegen stemde in plaats van voor (zoals in de eerste lezing) kwam het voorstel net niet tot een tweederde meerderheid.

Uit de vergelijkende analyse van deze twee casus blijkt de voorname rol die politieke partijen en in de hervormingsprocessen speelden. Deze politieke partijen bleken niet echt geneigd tot hervormingen. Er is één politieke partij, D66, die bekend staat om de roep om democratische hervormingen. Deze partij heeft weliswaar enkele hervormingen weten te bewerkstelligen, maar grotere democratische hervormingen zijn uitgebleven. Een belangrijke reden hiertoe is dat andere partijen democratische hervormingen als D66-onderwerpen zien en het electoraal niet bedreigend vinden. Ze weten hoe groot D66 heeft kunnen worden en verwachten niet dat ze zelf electoraal enorm gestraft zullen worden bij een tegenstem tegen een democratische hervorming. Andere actoren speelden natuurlijk wel een rol, maar in mindere mate en vooral bij de gepoogde introductie van de direct gekozen burgemeester. Bij die casus werd er behoorlijk wat verzet gemobiliseerd tegen de hervorming door belangenverenigingen. Er waren geen situationele omstandigheden die leidde tot een gedeelde roep om specifieke hervormingen.

Deze ervaringen kunnen worden vergeleken met de Duitse hervormingservaringen die behandeld zijn in **hoofdstuk 4**. Duitsland is een federale republiek en de aanstellingswijze van de burgemeester wordt bepaald op deelstatelijk (*Länder*) niveau. Op het moment dat de hervormingsprocessen van start gingen waren er meerdere democratiemodellen in gebruik voor het locale niveau, te weten:

- Het Noord-Duitse gemeentelijke model (*Norddeutsche Ratsverfassung*)
- Het Zuid-Duitse gemeentelijke model (*Süddeutsche Ratsverfassung*)
- Het magistraatsmodel (*Magistratsverfassung*), en
- Het burgemeestersmodel (*Bürgermeistersverfassung*)

Het Zuid-Duitse model was een model waarin burgemeesters direct door de bevolking werden gekozen. Het model was in gebruik in Beieren en Baden-Württemberg. De andere *Länder* hadden andere modellen in gebruik. Er was al een tijd wat hervormingsdruk in de landen die geen direct gekozen burgemeester hadden door bijvoorbeeld de lobbygroep voor democratische hervormingen *Mehr Demokratie e.V.*, maar ook door de KGSt (een belangenbehartiger voor gemeenten die beargumenteerde dat het zuidelijke model efficiënter was). De belangrijkste duw tot hervormingen kwam echter uit Hessen. De premier van Hessen, Walter Walmann, voorzag namelijk dat zijn CDU zou verliezen bij de aanstaande verkiezingen, en om dat te voorkomen organiseerde hij een referendum over de direct gekozen burgemeester. Dit referendum was ook noodzakelijk voor de grondwetswijziging die in Hessen nodig was. De uitslag leverde een grote meerderheid voor de introductie van direct gekozen burgemeesters op namelijk 82%. Het CDU verloor desondanks de verkiezingen.

Nadat Hessen als eerste *Land* deze stap had genomen volgden anderen. Afhankelijk van het *Land* oefende de SPD druk uit op het CDU of andersom. Veelal ging dit gepaard met het dreigen met het organiseren van initiatieven (door de bevolking of oppositiepartijen opgestarte referendums). Aangezien er overal in opiniepeilingen steun vergelijkbaar met de steun in Hessen naar voren kwam werkte deze tactiek goed en volgde al snel meerdere *Länder*. Hierbij hielp het ook dat de nieuwe Duitse staten (die zich bij de Duitse republiek aansloten na het opheffen van de DDR) en masse kozen voor het Zuid-Duitse model.

Bij de introductie van referendummogelijkheden op deelstatelijk niveau zien we dat er maar weinig staten waren zonder deze voorziening. Slechts Sleeswijk-Holstein, Nedersaksen en Hamburg hadden nog geen voorziening (en de nieuwe Oost-Duitse staten, maar die volgden al snel met hun keuze voor deelstatelijke referenda). Het proces kwam op gang in Sleeswijk-Holstein, waar CDU-premier Barschel verzeild raakte in een Watergate-achtig schandaal waarbij politieke tegenstanders werden afgeluisterd. Dit schandaal leidde tot zijn aftreden en uiteindelijk werd Barschel zelfs dood gevonden in een hotel in Zwitserland.

Het af luisterschandaal leidde tot veel verontwaardiging in Sleeswijk-Holstein, en zorgde voor urgentie om te hervormen. Meer transparantie en openheid waren gewenst, en er werd gewerkt aan een door alle partijen gedragen hervorming, waar het referendum ook bij hoorde. Tegelijkertijd betekende deze hervorming dat Nedersaksen de enige Duitse deelstaat was (de stadstaten uitgezonderd) waar het referendum nog niet op landsniveau bestond. Dit zorgde weer voor hervormingsdruk in Nedersaksen.

De vergelijkende analyse van de Duitse casus toonde aan dat ook hier politieke partijen van belang zijn, maar dat er in Duitsland meer partijen een rol spelen. In Duitsland was er een rol weggelegd voor leiderschap, zowel in 'positieve' zin bij Wallmann, als in 'negatieve' zin bij Barschel. Dit leiderschap pakte echter enkel zo uit door de federale structuur. In andere deelstaten ontstond hervormingsdruk wanneer andere landen democratische mogelijkheden uitbreidden. Nedersaksen kon niet achterblijven als enige deelstaat zonder het referendum. Wat hierbij ook hielp was dat (in het geval van de gekozen burgemeester) er in veel landen

al referendummogelijkheden bestonden die gebruikt werden om politieke partijen die niet wilden hervormen daartoe te bewegen.

In **hoofdstuk 5** werd gekeken naar de Oostenrijkse casus. De invoering van direct gekozen burgemeesters kan daarbij tussen de Nederlandse en Duitse ervaring in geplaatst worden. Er was namelijk weliswaar sprake van een invoering door een reeks deelstaten, maar tegelijkertijd was er ook een rol weggelegd voor het federale parlement. De eerste deelstaten die direct gekozen burgemeesters introduceerden waren Karinthië en Tirol. Vooral in Karinthië speelde de angst voor de opkomst van de FPÖ onder leiding van Jörg Haider daarbij een belangrijke rol. In Tirol speelde de opkomst van de FPÖ in minder mate een rol, daar werd er ook gekeken naar de Duitse en Zwitserse ervaringen. Nadat deze *Länder* echter de direct gekozen burgemeester hadden ingevoerd werd er een zaak aanhangig gemaakt bij het constitutioneel hof in Wenen. Het hof besloot dat de bestaande regeling tegen de grondwet inging en dat deze regeling dus niet toelaatbaar was.

Er waren op dat moment enkele andere deelstaten ook bezig met het de introductie van direct gekozen burgemeesters, maar deze deelstaten stopten dat proces naar aanleiding van de uitspraak van het constitutioneel hof. Omdat er nu een probleem was ontstaan ging men aan het werk in de *Nationalrat* en de *Bundesrat*, de twee kamers van het nationale parlement. De *Bundesrat*, de senaat, had in het proces geen veto maar zou het invoeringsproces kunnen vertragen. Er was dus slechts een tweederde meerderheid in de *Nationalrat* nodig voor een grondwetswijziging. Aangezien er binnen de SPÖ en ÖVP, traditioneel verreweg de grootste partijen in Oostenrijk, geen animo was om de deelstaten hier voor de voeten te lopen, al helemaal niet omdat er geen problemen waren geweest met de verkiezingen in de deelstaten tot nu toe en er angst was voor een verdere groei van de FPÖ, bleek dit geen probleem. Nadat de grondwet gewijzigd was volgden nog andere deelstaten met de invoering van direct gekozen burgemeesters op Wenen (waar het niet is toegestaan omdat dat een gekozen deelstaatsvoorzitter zou betekenen) en Neder-Oostenrijk na.

De invoering van het raadplegend referendum op het nationale niveau in de jaren '80 was een minder bevochten proces. De invoering volgde op ervaringen rondom de bouw van een kerncentrale bij Zwentendorf. Deze kerncentrale was omstreden maar werd wel gebouwd. Dit leidde uiteindelijk tot een beslissend referendum over het al dan niet aanzetten van de kerncentrale, het eerste referendum dat op die manier werd georganiseerd. Het resultaat was een nipte verwerping van het voorstel en daarmee een miljardenstrop voor de Oostenrijkse regering. Tegelijkertijd was deze geschiedenis ook één van de belangrijkste oorzaken van het oprichten van de *Grünen*, de Groene partij in Oostenrijk. Om de opkomst van de Groenen wellicht te kunnen stoppen en om zulke fiasco's zoals Zwentendorf in de toekomst te voorkomen werd er besloten tot het invoeren van het raadplegend referendum. Het kostte politieke partijen niets want er werd geen macht weggegeven, maar het zou wellicht voordelen opleveren.

De Oostenrijkse casus zijn duidelijke casus van politiek calculeren en de respondenten spraken hier openlijk over. De FPÖ probeerde het tweepartijstelsel dat Oostenrijk in feite

was open te breken en de SPÖ en ÖVP probeerden de opkomst van vooral de FPÖ maar ook de *Grünen* te stoppen. Daarbij speelde mee dat het om hervormingen op deelstatelijk niveau ging en er zodoende hervormingsdruk op deelstatelijk niveau ontstond. Ook de ondersteuning van groepen zoals *Mehr Demokratie e.V.* en de *Gemeindebund* hielp.

In **hoofdstuk 6** zijn de verschillende hervormingsprocessen in de drie landen vergelijkend geanalyseerd en zijn conclusies geformuleerd. Uit de vergelijking bleek dat Nederland over het algemeen de lastigste hervormingsprocedure kende: er waren meer stemronden en grotere meerderheden nodig om de hervormingen tot stand te brengen. Soortgelijke hervormingen in Duitsland en Oostenrijk waren eenvoudiger tot stand te brengen. Hier speelde ook mee dat de federale structuur van Duitsland en Oostenrijk deze hervormingsprocessen versterkt heeft. De vraag 'waarom hier niet?' liet zich al snel stellen in deelstaten waar bepaalde democratische vernieuwingen nog niet geïntroduceerd waren. In Duitsland waren er ook vaak mogelijkheden om te dreigen met het organiseren van initiatieven.

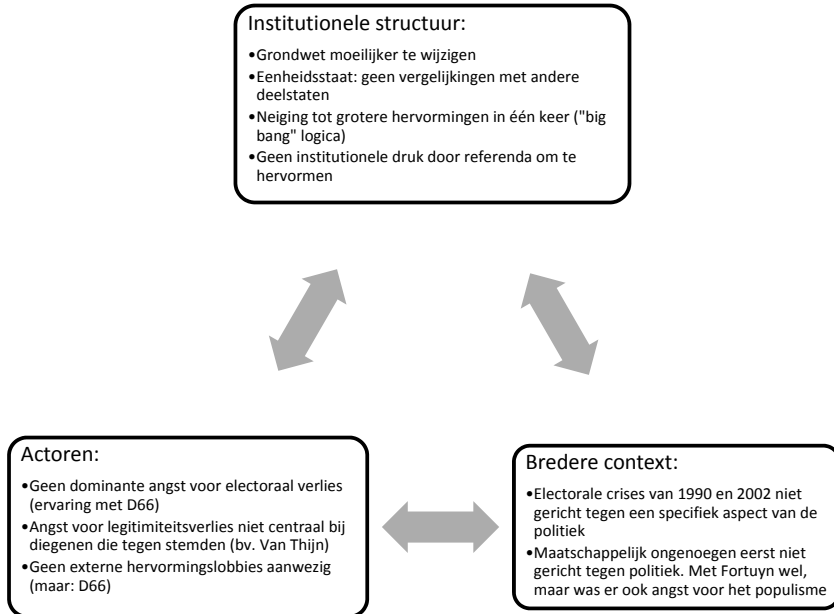
Als we kijken naar de actoren die betrokken waren bij de hervormingsprocessen dan zien we zowel overeenkomsten als verschillen. Een overeenkomst is dat ambtenaren geen belangrijke rol hebben gespeeld bij de verschillende hervormingsprocessen. Politieke partijen hebben de hervormingsprocessen gedomineerd. De manier waarop die partijen redeneren verschilde echter in de drie landen. In Nederland waren de traditionele grote partijen (CDA, PvdA en VVD) niet bezorgd om de roep om democratische hervormingen. Het onderwerp werd gezien als een D66-onderwerp waarmee men electoraal maar weinig kon winnen. In tegenstelling hiertoe was het in Duitsland een steekspel tussen SPD en CDU, waarbij de keuze van één van beide partijen om democratische hervormingen te steunen wel werd gezien als iets dat een verkiezingsuitslag zou kunnen beïnvloeden. In Oostenrijk was er ook steeds sprake van een overeenkomst tussen de SPÖ en de ÖVP om toch maar voor hervormingen te stemmen om de groei van de FPÖ en *Grünen* te stoppen.

Enige steun kwam hierbij ook van de lobbies die actief waren in Duitsland en Oostenrijk (*Mehr Demokratie e.V.*, KGSt, *Gemeindebund*), terwijl dat in Nederland niet op die manier gebeurde. Voor zover er externe geluiden te horen waren was dat eerder gericht tegen de hervormingen. Ook in het geval van hervormend leiderschap kunnen we constateren dat dit in Duitsland wel aanwezig was, maar in Nederland eerder sprake was van hervormingsblokkerend leiderschap. Het is belangwekkend om te constateren dat de roep om hervormingen wel van vergelijkbare grootte was in alle drie de landen. Uit opiniepeilingen en referenda bleek steevast grote steun. Of het onderwerp politiek echt van belang is, is daarbij een andere vraag.

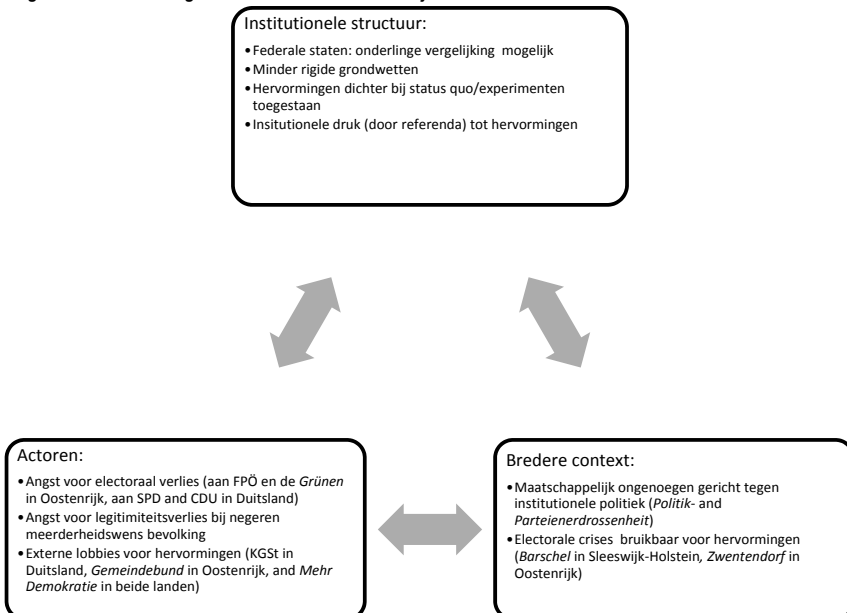
De bredere context laat een vergelijkbare historische ontwikkeling zien, zoals de opkomst van postmoderne waarden, maar er waren ook verschillen. Zo heeft het oorlogsverleden van Duitsland en Oostenrijk zijn sporen nagelaten bij politici in hun hang naar legitimiteit. Wanneer tevredenheid en beoordelingen slechter worden, raken politici onzeker. Belangrijker nog zijn de situationele omstandigheden. Terwijl in Duitsland hervorming gestimuleerd werd door een politiek schandaal, een referendum, en de eenwording, en er in Oostenrijk Zwettendorf

en de opkomst van de FPÖ en *Grünen* was, leidden dit soort omstandigheden niet tot een gedeeld hervormingsdiscours in Nederland.

Figuur A: Non-hervormingen in Nederland



Tegenover hervormingen in Duistland en Oostenrijk:



De verschillen tussen de drie landen zijn gesimplificeerd samengevat in figuur A hierboven.

Deze verschillen en overeenkomsten leidden tot de volgende conclusies:

- a) De introductie van direct gekozen burgemeesters en een referendummogelijkheid was moeilijker in Nederland dan in Duitsland en Oostenrijk door de formele procedure (waartoe de mogelijkheid tot het organiseren van referendums om partijen onder druk te zetten in Duitsland en Oostenrijk behoort).
- b) Duitsland en Oostenrijk tonen aan dat een federale structuur en referendummogelijkheden binnen die structuur hervormingen kunnen stimuleren omdat federale staten vaak veel op elkaar lijken en argumenten tegen hervormingen daardoor minder sterk zijn.
- c) Een hervorming zal minder waarschijnlijk plaatsvinden als deze gezien wordt als een grote trendbreuk van het bestaande omdat dat meer onzekerheid oplevert: "big bang" hervormingen zullen minder snel tot stand komen dan geleidelijke veranderingen.
- d) Brede maatschappelijke steun is nodig maar niet voldoende om tot een democratische hervorming te komen: in alle casus was er sprake van grote steun, maar niet in alle casus leidde dit tot hervormingen.
- e) Nederlandse politici interpreteren de representatieve democratie op een radicalere manier dan hun Duitse en Oostenrijkse evenknie: waar Nederlandse politici zich vaker vrij voelen om de publieke opinie te negeren, nemen Oostenrijkse en, met name, Duitse politici deze sneller serieus.
- f) Leiderschap doet ertoe in hervormingscasus, maar er is niet één leiderschapstijl die gekoppeld kan worden aan het slagen van een hervormingsproces.
- g) Duitse en Oostenrijkse politici zien electorale schokken (zoals resultaten van referenda of verkiezingen) sneller dan Nederlandse politici als iets waar een gepaste reactie op moet komen zoals een hervorming.
- h) Een crisis helpt het hervormingsproces vooruit. Hoewel dit wellicht meer het geval is in Duitsland en Oostenrijk dan in Nederland.

Deze conclusies zijn vervolgens gebruikt om te reflecteren op de literatuur die behandeld is in **hoofdstuk 2**. Het resultaat leidt tot drie hypothesen:

- 1) Des te zwaarder de hervormingsprocedure, des te kleiner de kans op hervormingen, tenzij burgers en oppositiepartijen de hervorming op de agenda kunnen plaatsen met behulp van initiatieven en/of referenda.
- 2) Als democratische verantwoording directer plaatsvindt, zullen politici sneller geneigd zijn de publieke opinie in hun overwegingen op te nemen, en wanneer die verantwoording minder direct is juist niet.
- 3) In consensusdemocratieën moeten verschillende partijen instemmen met een hervorming, en om daarin mee te gaan moeten deze partijen een aanwijsbare reden hebben om te hervormen, anders zullen deze partijen vasthouden aan de bestaande structuren.

De eerste hypothese moet gelezen worden in relatie tot de theorieën die schrijven over veto spelers en de auteurs die hebben gesteld dat er in Nederland geen hervormingen heb-

ben plaatsgevonden vanwege de te rigide hervormingsprocedure (Kiser and Ostrom 1982; Andeweg 1989; 1997; Tsebelis 2002; Ostrom 2006; Tsebelis 2008). De tweede hypothese gaat over de actoren betrokken bij het hervormingsproces. Een overeenkomst tussen de casus was, dat politieke partijen ondanks de betrokkenheid van burgers en lobbygroepen dominant waren. Een verschil tussen de Nederlandse, Duitse, en Oostenrijkse casus was de manier waarmee de politieke partijen omgingen met de roep om hervormingen. De laatste hypothese gaat over de bredere context van de hervormingscasus. We hebben gezien dat er theorieën zijn die iets te zeggen hebben over de crises of schokken die ervoor zorgen dat geïnstitutionaliseerde structuren toch veranderen, ondanks dat stabiliteit de meest voor de hand liggende staat is (Baumgartner and Jones 1993; Kriesi and Wisler 1996; Leyenaar and Hazan 2011). Crises worden gedefinieerd door de betrokkenen bij het hervormingsproces, en alleen wanneer de beslissers iets als een crisis zien zullen er hervormingen volgen.

In **hoofdstuk 7**, de epiloog, wordt er gekeken naar de implicaties van de hervormingsprocessen. Maakt het eigenlijk wel wat uit? Er wordt hierbij naar twee aspecten gekeken van de (pogingen tot) hervormingen: de onmiddellijke gevolgen van het hervormingsproces en de bredere gevolgen. In Nederland hebben de twee non-hervormingen geleid tot twee kabinetcrises die relatief eenvoudig gerepareerd konden worden. In de Duitse en Oostenrijkse casus hebben de invoering van direct gekozen burgemeesters de lokale democratie weliswaar veranderd, maar niet dramatisch. De angst voor *cohabitation* die aanwezig was bij sommigen bleek niet terecht te zijn (er was wel sprake van, maar dit zorgde allerminst voor grote problemen). De direct gekozen burgemeesters verschilden daarbij niet enorm van de bestaande informele praktijk om de leider van de grootste partij tot burgemeester te kiezen. Het raadplegend referendum op nationaal niveau is in Oostenrijk niet gebruikt. In Nederland is er een raadplegend referendum georganiseerd over de EU-grondwet met een tegenstem tot gevolg, wat de waardering voor het instrument bij veel politici niet vergroot heeft.

De bredere effecten zijn lastiger vast te stellen. De algemene ontwikkeling van vertrouwenscijfers en tevredenheid is vergelijkbaar in de drie landen, waarbij opgemerkt dient te worden dat Oost-Duitsland veelal slechter scoort op veel indicatoren. Er is gekeken naar data van de European Value Studies (EVS), omdat deze data een aantal indicatoren bevatte die meer van toepassing zijn op de effecten van hervormingen dan de gegevens van de Eurobarometer. Deze gegevens lijken er op te wijzen dat hervormingen in Nederlands best wat sneller doorgevoerd zouden mogen worden. De tevredenheid met de ontwikkeling van de democratie is afgenomen in Nederland, en meer dan in West-Duitsland.

De gegevens geven geen definitief antwoord om de bredere effecten van de (gepoogde) hervormingen te evalueren, maar de combinatie van gegevens is interessant. De hervormingen in Duitsland en Oostenrijk hebben geen verschrikkelijke gevolgen gehad voor de democratie aldaar, dus waarom zouden de hervormingen in Nederland niet kunnen? De bredere ontwikkelingen die de EVS laat zien verschillen wel wat per land, dus de vraag is dan waar die verschillen vandaan komen. Dat Nederland relatief slecht scoort kan vele verschillen

hebben, één daarvan is het uitblijven van democratische hervormingen. Welke van de twee, hervormen of niet-hervormen, de betere optie is, zal ongetwijfeld in de toekomst blijken.

Appendix 1

Interviewed Persons

It is worthwhile to briefly restate the arguments for choosing certain respondents and not others. For those interested in a more detailed description of the arguments for the selection of respondents I refer to section 2.8. The following list is based on several criteria. Most importantly, the respondents had to be involved in the reform processes researched in this study. It was attempted to speak to representatives of all relevant parties involved in the process. This effectively meant that politicians were the main source of information. The German list of interviews is shorter as much academic research had been done on the introduction of direct mayoral elections and referendums in Germany. Instead, interviews with academics were held to discuss their publications on the matter and better understand these reform processes with the help of these discussions.

THE NETHERLANDS

1. De Cloe, Dick (PvdA) (20/1/2011)
2. Deetman, Wim (CDA) (9/1/2008)
3. De Graaf, Thom (D66) (6/3/2010)
4. De Wit, Jan (SP) (22/1/2009)
5. Dubbelboer, Niesco (PvdA) (15/2/2011)
6. Duyvendak, Wijnand (GroenLinks) (8/2/2011)
7. Engels, Hans (D66) (20/1/2009)
8. Hessing, Ruud (D66) (9/2/2011)
9. Klijnsma, Meine Henk (civil servant) (20/11/2008)
10. Koole, Ruud (PvdA) (7/2/2011)
11. Luchtenveld, Ruud (VVD) (7/2/2011)
12. Niederer, Jacques (VVD) (9/1/2009)
13. Noten, Han (PvdA) (29/3/2011)
14. Opstelten, Ivo (VVD) (5/2/2009)
15. Peper, Bram (PvdA) (19/1/2011)
16. Postma, Andries (CDA) (11/2/2011)
17. Putters, Kim (PvdA) (15/12/2008 & 19/01/2010)
18. Rehwinkel, Peter (PvdA) (21/2/2011)
19. Scheltema-De Nie, Olga (D66) (7/2/2011)
20. Schipper, Hanneke (civil servant) (14/11/2008)
21. Schoondergang-Horikx, Cobi (GroenLinks) (8/2/2011)
22. Schuyer, Eddy (D66) (20/1/2009)
23. Spies, Liesbeth (CDA) (22/1/2009)
24. Stein, Marion (interest group) (27/11/2008)
25. Steur, Boudewijn (civil servant/publicist) (9/4/2010)

26. Te Veldhuis, Jan (VVD) (5/2/2009)
27. Van Beek, Willibrord (VVD) (22/1/2009)
28. Van den Broek, Daniëlle (VVD) (20/1/2009)
29. Van den Eijnden, Sander (civil servant) (10/3/2009)
30. Van Raak, Ronald (SP) (5/2/2009)

Miscellaneous

- Van Thijn, Ed (PvdA) refused to participate in an interview but did send personal writings on the negotiations around the direct mayoral election and the '*Nacht van Van Thijn*'.
- Wiegel, Hans (VVD) did not respond to several interview requests.

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2. Bogumil, Jörg (academic) (4/11/2009)
3. Burghardt, Horst (*Grünen*) (25/1/2010)
4. Dressler, Ullrich (civil servant/publicist) (26/1/2010)
5. Haus, Michael (academic) (20/10/2009)
6. Holtkamp, Lars (academic) (7/10/2009)
7. Kuhlman, Sabine (academic) (29/10/2009)
8. Vetter, Angelika (academic) (14/10/2009)

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2. Dornauer, Georg (SPÖ) (8/11/2010)
3. Ebenberger, Walter (FPÖ) (9/11/2010)
4. Eberle, Ferdinand (ÖVP) (8/11/2010)
5. Freunschlag, Jörg (FPÖ/Liberales Forum) (16/11/2010)
6. Frischenschlager, Friedhelm (FPÖ) (11/11/2010)
7. Fuhrmann, Willi (SPÖ) (2/11/2010)
8. Guggenbichler, Arno (SPÖ) (8/11/2010)
9. Haupt, Herbert (FPÖ) (15/11/2010)
10. Kaiser, Peter (SPÖ) (15/11/2010)
11. Khol, Andreas (ÖVP) (23/11/2010)
12. Klug, Franz (*Grünen*) (22/11/2010 – via telephone)
13. Konecny, Allbrecht (SPÖ) (3/11/2010)

14. Kranebitter, Franz (ÖVP) (9/11/2010)
15. Krauter, Günther (SPÖ) (25/11/2010)
16. Lackner, Helmut (*Gemeindebund*) (16/11/2010)
17. Moisi, Stefan (independent mayor) (16/11/2010)
18. Muhlbachler, Josef (ÖVP) (10/11/2010)
19. Niederwieser, Erwin (SPÖ) (8/11/2010)
20. Perfler, Michael (ÖVP) (3/11/2010)
21. Pramendorfer, Hermann (ÖVP) (10/11/2010)
22. Prasch, Helmut (FPÖ) (16/11/2010)
23. Primosch, Stefan (*Gemeindebund*) (16/11/2010)
24. Scherwitzl, Andreas (SPÖ) (15/11/2010)
25. Schlögl, Karl (SPÖ) (18/11/2010)
26. Tremmel, Paul (FPÖ) 5/11/2010)
27. Wegschneider, Ernst (academic) (9/11/2010)
28. Weiss, Jürgen (ÖVP) (10/11/2010)
29. Wurmitzer, Georg (ÖVP) (15/11/2010)

Miscellaneous

- Fischer, Heinz (SPÖ) did not respond to various interview requests.
- Graff, Michael (ÖVP) had deceased at the time the research into the case of the advisory referendum took place.

Appendix 2

Documents studied

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- Kamerstuk 1992-1993, 21427, nr. 34, Tweede Kamer.
- Kamerstuk 1995-1996, 24400 VII, nr. 31, Tweede Kamer.
- Kamerstuk 1995-1996, 24639, nr. 1, Staten Generaal.
- Kamerstuk 1995-1996, 21427, nrs. 113, 116, 130, 131, 139, 142-143, 147, 152, Tweede Kamer.
- Kamerstuk 1995-1996, 24690, nrs. 1-2, Tweede Kamer.
- Kamerstuk 1996-1997, 21427, nr. 158, 164-166, Tweede Kamer.
- Kamerstuk 1996-1997, 25444, nrs. 1-3 & A, Tweede Kamer.
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- Kamerstuk 1997-1998, 26024, nr. 11, Tweede Kamer.
- Kamerstuk 1997-1998, 26070, nr. 1, Tweede Kamer.
- Kamerstuk 1997-1998, 25620, nrs. 1-4, Tweede Kamer.
- Kamerstuk 1997-1998, 25444, nrs. 4-5, Tweede Kamer.
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- Kamerstuk 1997-1998, 25153, nr. 67 a-d, Eerste Kamer.
- Kamerstuk 1998-1999, 25444, nrs. B & 6, Tweede Kamer.
- Kamerstuk 1998-1999, 26540, nr. 2, Tweede Kamer.
- Kamerstuk 1998-1999, 26156, nrs. 1-10, 221 a-c, Eerste Kamer.
- Kamerstuk 1998-1999, 25620, nrs. 177 & 177a, Eerste Kamer.
- Kamerstuk 1999-2000, 25444, nrs. 7-18, Tweede Kamer.
- Kamerstuk 1999-2000, 25444, nr. 6, Eerste Kamer.
- Kamerstuk 2000-2001, 25444, nrs. 11 a-ff, Eerste Kamer.
- Kamerstuk 2000-2001, 25620, nr. 176, Eerste Kamer.
- Kamerstuk 2001-2002, 27551, nr. 56 & 56a, Eerste Kamer.
- Kamerstuk 2001-2002, 27590, nr.1, Tweede Kamer
- Kamerstuk 2002-2003, 28177, nrs. 1-3, Tweede Kamer.
- Kamerstuk 2002-2003, 28177 en 28841, nr. 4, Tweede Kamer.
- Kamerstuk 2002-2003, 28600 VII, nr. 31, Tweede Kamer.
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- Kamerstuk 2003-2004, 29200 IV, nrs. 1 & 2, Tweede Kamer.
- Kamerstuk 2003-2004, 29200 VII, nrs. 27 & 62, Tweede Kamer.
- Kamerstuk 2003-2004, 29223, nrs. 1-12, Tweede Kamer.
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- Kamerstuk 2004-2005, 29865, nrs. 2 & 3, Tweede Kamer.

- Kamerstuk 2004-2005, 29958, nrs. 2-3, Tweede Kamer.
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- Kamerstuk 2004-2005, 30184, nr. 1, Tweede Kamer.
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- Vergadering van de Tweede Kamer, 19^e vergadering, 31 oktober 1995, Ingekomen stukken.
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- Vergadering van de Tweede Kamer, 54^e vergadering, 13 februari 1996, 21427.
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- Vergadering van de Tweede Kamer, 49^e vergadering, 9 februari 1999, 26156.
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- Vergadering van de Tweede Kamer, *26^e vergadering*, 27 november 2002, 28600-VII; B; C.
- Vergadering van de Tweede Kamer, *46^e vergadering*, 3 februari 2004, Gekozen burgemeester.
- Vergadering van de Tweede Kamer, *49^e vergadering*, 10 februari 2004, Stemmingen.
- Vergadering van de Tweede Kamer, *86^e vergadering*, 22 juni 2004, Vragenuur
- Vergadering van de Eerste Kamer, *21^e vergadering*, 22 maart 2005, 28509.
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Immune to reform?

Understanding democratic reform in three consensus democracies:
the Netherlands compared with Germany, and Austria

Democratic reform can be a peculiar type of reform, as it can involve politicians changing a system that brought them power in the first place. Especially in cases where consensus between several political parties is required, reform will be difficult. In the Netherlands, a highly consensus-oriented country, attempts to implement direct mayoral elections and a corrective legislative referendum have failed. The reasons why there are few democratic reforms in the Netherlands are usually sought in the rigidity of the reform procedure and the nature of Dutch politicians.

In this study, Dutch reform experiences are compared to German and Austrian experiences. Germany and Austria, too, are countries with a tradition of consensus-seeking. In the same period as the Netherlands, Germany and Austria have attempted to introduce direct mayoral elections and some referendum-possibilities. Contrary to the Netherlands, Germany and Austria seem to have been more successful with these attempts.

The comparison shows that reform procedures and politicians do play a role, but so does the context in which reform is attempted. Furthermore, there are more aspects to the reform procedure than mere rigidity. The wider institutional structure matters for the outcome of reform processes. Reform success or failure depends on more actors than politicians, too. Interest groups and media, for instance, can play an important role. The study also includes an exploration of the effects of the reforms.

